

**State of Nebraska**  
**2005**  
**State Fire Marshal Act**  
**and Related Laws**



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**State Fire Marshal**

## **PREFACE**

The text of this booklet includes the State Fire Marshal Act, the Arson Reporting Immunity Act, the One-Call Notification System Act, the Natural Gas Pipeline Safety Act, the Petroleum Product and Hazardous Substances Storage and Handling Act, the Volunteer Emergency Responder Recruitment and Retention Act, and the Public Safety Wireless Communication System Act, as well as important excerpts from the other laws of the State of Nebraska which are pertinent to the subject of fire prevention and regulations. It includes those laws adopted by the Nebraska State Legislature through December 31, 2005.

This revision supersedes the 2003 State Fire Marshal Act and Related Laws.

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**13-303. Counties, cities, and villages; contract; agreement; hearing; notice; cost; levy; fee.** The county boards of counties and the governing bodies of cities and villages may establish an emergency medical service, including the provision of scheduled and unscheduled ambulance service, as a governmental service either within or without the county or municipality, as the case may be. The county board or governing body may contract with any city, person, firm, or corporation licensed as an emergency medical service for emergency medical care by out-of-hospital emergency care providers. Each may enter into an agreement with the other under the Interlocal Cooperation Act or Joint Public Agency Act for the purpose of establishing an emergency medical service or may provide a separate service for itself. Public funds may be expended therefor, and a reasonable service fee may be charged to the user. Before any such service is established under the authority of this section, the county board or the governing bodies of cities and villages shall hold a public hearing after giving at least ten days' notice thereof, which notice shall include a brief summary of the general plan for establishing such service, including an estimate of the initial cost and the possible continuing cost of operating such service. If the board or governing body after such hearing determines that an emergency medical service for emergency medical care by out-of-hospital emergency care providers is needed, it may proceed as authorized in this section. The authority granted in this section shall be cumulative and supplementary to any existing powers heretofore granted. Any county board of counties and the governing bodies of cities and villages may pay their cost for such service out of available general funds or may levy a tax for the purpose of providing the service, which levy shall be in addition to all other taxes and shall be in addition to restrictions on the levy of taxes provided by statute, except that when a fire district provides the service the county shall pay the cost for the county service by levying a tax on that property not in a fire district providing the service. The levy shall be subject to section 77-3443.

**Source:** Laws 1967, c. 111, § 1, p. 359; Laws 1973, LB 239, § 1; Laws 1978, LB 560, § 2; R.S.1943, (1983), § 23-378; Laws 1996, LB 1114, § 25; Laws 1997, LB 138, § 31; Laws 1999, LB 87, § 51; Laws 2001, LB 808, § 1.

**14-102. Additional powers.** In addition to the powers granted in section 14-101, cities of the metropolitan class shall have power by ordinance:

Taxes, special assessments.

- (32) To prescribe fire limits and regulate the erection of all buildings and other structures within the corporate limits; to provide for the removal of any buildings or structures or additions thereto erected contrary to such regulations, to provide for the removal of dangerous buildings, and to provide that wooden buildings shall not be erected or placed or repaired in the fire limits; but such ordinance shall not be suspended or modified by resolution nor shall exceptions be made by ordinance or resolution in favor of any person, firm, or corporation or concerning any particular lot or building; to direct that all and any building within such fire limits, when the same shall have been damaged by fire, decay, or otherwise, to the extent of fifty percent of the value of a similar new building above the foundation, shall be torn down or removed; and to prescribe the manner of ascertaining such damages and to assess the cost of removal of any building erected or existing contrary to such regulations or provisions, against the lot or real estate upon which such building or structure is located or shall be erected, or to collect such costs from the owner of any such building or structure and enforce such collection by civil action in any court of competent jurisdiction;

Building regulations.

- (33) To regulate the construction, use, and maintenance of party walls, to prescribe and regulate the thickness, strength, and manner of constructing stone, brick, wood, or other buildings and the size and shape of brick and other material placed therein, to prescribe and regulate the construction and arrangement of fire escapes and the placing of iron and metallic shutters and doors therein and thereon, and to provide for the inspection of elevators and hoist-way openings to avoid accidents; to prescribe, regulate, and provide for the inspection of all plumbing, pipefitting, or sewer connections in all houses or buildings now or hereafter erected; to regulate the size, number, and manner of construction of halls, doors, stairways, seats, aisles, and passageways of theaters, tenement houses, audience rooms, and all buildings of a public character, whether now built or hereafter to be built, so that there may be convenient, safe, and speedy exit in case of fire; to prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers, and heating appliances used in or about any building or a manufactory and to cause the same to be removed or placed in safe condition when they are considered dangerous; to regulate and prevent the carrying on of manufactures dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places and to cause such buildings and enclosures as may be in a dangerous state to be put in a safe condition; to prevent the disposing of and delivery or use in any building or other structure, of soft, shelly, or imperfectly burned brick or other unsuitable building material within the city limits and provide for the inspection of the same; to provide for the abatement of dense volumes of smoke; to regulate the construction of areaways, stairways, and vaults and to regulate partition

fences; to enforce proper heating and ventilation of buildings used for schools, workhouses, or shops of every class in which labor is employed or large numbers of persons are liable to congregate;

**Source:** Laws 1921, c. 116, art. I, § 2, p. 398; C.S.1922, § 3489; C.S.1929, § 14-102; R.S.1943, § 14-102; Laws 1963, c. 314, § 1, p. 945; Laws 1971, LB 237, § 1; Laws 1972, LB 1274, § 1; Laws 1974, LB 768, § 1; Laws 1981, LB 501, § 1; Laws 1986, LB 1027, § 186; Laws 1991, LB 356, § 1; Laws 1991, LB 849, § 59; Laws 1992, LB 1257, § 63; Laws 1993, LB 138, § 61; Laws 1993, LB 623, § 1.

**Note:** "This act", defined, see section 14-101. The changes made by LB 138, section 61, became effective February 25, 1993. The changes made by LB 623, section 1, became effective September 9, 1993.

**Cross References:**

Interlocal Cooperation Act, see section 23-2202.

Nebraska Bingo Act, see section 9-201.

Nebraska Lottery and Raffle Act, see section 9-401.

Nebraska Pickle Card Lottery Act, see section 9-301.

Nebraska Small Lottery and Raffle Act, see section 9-501.

State Lottery Act, see section 9-801.

**14-102.02. Fire and police departments; rules and regulations; adoption; duty of city council.** All powers and duties connected with and incident to the appointment, removal, government, and discipline of the officers and members of the fire and police departments of any metropolitan city in the State of Nebraska, under such rules and regulations as may be adopted by the city council, shall be vested in and exercised by said council. Rules and regulations for the guidance of the officers and men of said departments, and for the appointment, promotion, removal, trial or discipline of said officers, men and matrons, shall be such as the council shall consider proper and necessary.

**Source:** Laws 1921, c. 116, art. VI, § 1, p. 504; C.S.1922, § 3701; C.S.1929, § 14-701; R.S.1943, § 14-701; Laws 1961, c. 30, § 8, p. 150; R.S.1943, (1983), § 14-701.

**14-522. Fire engine house; bonds; issuance; amount.** The council may issue bonds of the city not to exceed thirty thousand dollars in any one year for the purpose of erecting fire engine houses.

**Source:** Laws 1921, c. 116, art. IV, § 18, p. 476; C.S.1922, § 3643; C.S.1929, § 14-520.

**14-527. Bonds; issuance; election required; exceptions.** Bonds of the city shall not be issued without a vote of the electors in the manner provided for in this act except the following which may be issued by the city council without such vote:

- (1) To finance street improvements, grading, renewal or refunding;
- (2) police station, not to exceed one hundred thousand dollars in any one year;
- (3) park, not to exceed one hundred thousand dollars in any one year;
- (4) sewer, not to exceed five hundred thousand dollars in any one year;
- (5) public comfort station, not to exceed fifty thousand dollars in any one year;
- (6) fire engine house, not to exceed thirty thousand dollars in any one year; and
- (7) to pay for the acquisition of existing utility systems or plants by condemnation proceedings.

**Source:** Laws 1921, c. 116, art. IV, § 22, p. 478; C.S.1922, § 3648; C.S.1929, § 14-525.

**14-701.** Transferred to section 14-102.02.

**14-702. Fire department; officers, employees; appointment; criminal history record information check.** The city council shall employ a chief of the fire department and all other officers, firefighters, and assistants as may be proper and necessary for the effective service of the fire department to the extent and limit that the funds provided by the city council for that purpose will allow. Each fire department applicant shall, as a condition of employment, submit to the city a full set of his or her fingerprints along with written permission authorizing the city to forward the set of fingerprints to the Federal Bureau of Investigation, through either the Nebraska State Patrol or the police department, to facilitate a check of his or her criminal history record information by the Identification Division of the Federal Bureau of Investigation. The fingerprint check provided for in this section shall be solely for the purpose of confirming information provided by the fire department applicant.



**Source:** Laws 1921, c. 116, art. VI, § 5, p. 506; C.S.1922, § 3706; C.S.1929, § 14-706; R.S.1943, § 14-702; Laws 1994, LB 1025, § 1. Effective date July 16, 1994.

**14-704. Fire department; officers; removal; causes; procedure.** All members or appointees of the fire department shall be subject to removal by the city council under such rules and regulations as may be adopted, and whenever the council shall consider and declare such removal necessary for the proper management or discipline, or for the more effective working or service of the fire department. No member or officer of the fire department shall be discharged for political reasons, nor shall a person be employed or taken into such department for political reasons. Before a fireman can be discharged, charges must be filed against him before the council and a hearing had thereon, and an opportunity given such member to defend against such charges, but this provision shall not be construed to prevent peremptory suspension of such member by his superiors in case of misconduct or neglect of duty or disobedience to orders. Whenever any such suspension is made, charges shall be at once filed before the council by the person ordering such suspension, and a trial had thereon. The council shall have the power to enforce the attendance of witnesses and the production of books and papers, and to administer oaths to them in the same manner and with like effect and under the same penalties as in the case of magistrates exercising civil and criminal jurisdiction under the statutes of the State of Nebraska. It shall have such other powers and perform such other duties as may be authorized or defined by ordinance.

**Source:** Laws 1921, c. 116, art. VI, § 6, p. 506; C.S.1922, § 3707; C.S.1929, §14-707.

**14-709. Authorized arson investigator; classified as a peace officer; when; powers.** Any person who is a sworn member of an organized and paid fire department of any city of the metropolitan class and who is an authorized arson investigator for such city in order to determine the cause, origin, and circumstances of fires, shall be classified as a peace officer while on duty and in the course of any such investigation. Such person shall possess the same powers of arrest, search and seizure, and the securing and service of warrants as police officers of such city. While on duty and in the course of any such investigation, such person may carry such weapons as may be necessary, but only if that person has satisfactorily completed a training program offered or approved by the Nebraska Law Enforcement Training Center or equivalent training offered by such city. Such training need not include exposure to vehicle and traffic law, traffic control and accident investigation, or first aid. Such person shall in addition have been an active member of an organized fire department for a minimum of six years, and shall meet the minimum qualifications and training standards established by the city for all firefighters.

Any person granted the powers enumerated in this section may exercise such powers only while on duty and during the course of investigating the cause, origin, and circumstances of a fire.

**Source:** Laws 1981, LB 205, § 1.

**15-225. Fire department; establishment; government.** A primary city shall have power to provide for the organization of a fire department, to procure fire engines, hooks, ladders, buckets and other apparatus, to organize fire engine, hook, ladder and bucket companies, to prescribe rules of duty, and the government thereof, with such penalties as the council may deem proper, not exceeding a one-hundred-dollar fine, to make all necessary appropriations therefor, and to establish regulations for the prevention and extinguishment of fires.

**Source:** Laws 1901, c. 16, § 129, XXIX, p. 134; Laws 1907, c. 9, § 13, p. 84; Laws 1913, c. 7, § 1, p. 65; R.S.1913, § 4439; C.S.1922, § 3823; C.S.1929, § 15-226.

**15-228. Fire or water districts; water mains; enlarging; construction; assessments.**

The city council shall have power to create water districts for the purpose of supplying water for domestic, industrial, or fire purposes, or for the purpose of enlarging any water mains, now existing or hereafter constructed. All such districts, to be known as water districts, shall be created by ordinance and shall designate the property to be benefitted. Upon creation of any water district, the city council shall have power to construct or cause to be constructed, either by contract with the lowest responsible bidder or directly by the city, such water main or mains, or extensions or enlargements, including all necessary appliances for fire protection, within such districts as the council shall determine, and assess the costs thereof against the property in such district, not exceeding the special benefits accruing on account thereof. The city council shall have power and authority to fix the period of time, not to exceed twenty years, in which the special assessments against any property for the payment of the cost of such improvements may be made. The city council shall have power and authority to issue bonds in accordance with the provisions of a home rule charter of the city or of state law.

**Source:** Laws 1907, c. 9, § 13, p. 85; Laws 1913, c. 7, § 1, p. 65; R.S.1913, § 4439; C.S.1922, § 3823; C.S.1929, § 15-226; R.S.1943, § 15-228; Laws 1969, c. 66, § 1, p. 378.

**15-1012. Firemen; existing system; rights retained.** Notwithstanding any other language in Laws 1947, c. 23, sections 1 to 22, it is specifically provided that the provisions of article 2, Chapter 35, in effect for firemen of cities of the primary class on September 7, 1947, at variance with the provisions of Laws 1947, c. 23, sections 1 to 22, shall be controlling and supersede the provisions of Laws 1947, c. 23, sections 1 to 22, as to all persons who were members of such fire department on such date and the widows and children of all such members.

**Source:** Laws 1947, c. 23, § 18, p. 122.

**15-1017. Pension funds; investment; reports.**

- (1) A city of the primary class which has a city pension and retirement plan or fund, or a city fire and police pension plan or fund, or both, may provide by ordinance as authorized by its home rule charter, and not prohibited by the Constitution of Nebraska, for the investment of any plan or fund, and it may provide that
  - (a) such a city shall place in trust any part of such plan or fund,
  - (b) it shall place in trust any part of any such plan or fund with a corporate trustee in Nebraska, or
  - (c) it shall purchase any part of any such plan from a life insurance company licensed to do business in the State of Nebraska. The powers conferred by this section shall be independent of and in addition and supplemental to any other provisions of the laws of the State of Nebraska with reference to the matters covered hereby and this section shall be considered as a complete and independent act and not as amendatory of or limited by any other provision of the laws of the State of Nebraska.
- (2) (a) Beginning December 31, 1998, and each December 31 thereafter, the clerk of a city of the primary class shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section, section 15-1026, and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the members of the Nebraska Retirement Systems Committee of the Legislature. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:
  - (i) The number of persons participating in the retirement plan;
  - (ii) The contribution rates of participants in the plan;
  - (iii) Plan assets and liabilities;
  - (iv) The names and positions of persons administering the plan;
  - (v) The names and positions of persons investing plan assets;
  - (vi) The form and nature of investments;
  - (vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and
  - (viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the city clerk may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.
- (b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the city council of a city of the primary class shall cause to be prepared a quadrennial report and shall file the same with the Public Employees Retirement Board and submit to the members of the Nebraska Retirement Systems Committee of the Legislature a copy of such report. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section and section 15-1026. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

**Source:** Laws 1967, c. 52, § 1, p. 188; Laws 1998, LB 1191, § 17; Laws 1999, LB 795, § 6.

**16-222. Fire department; establishment authorized; fire prevention; regulations.** A city of the first class may provide for the organization and support of a fire department; procure fire engines, hooks, ladders, buckets and other apparatus; organize fire engine, hook and ladder, and bucket companies, and prescribe rules for duty and the government thereof, with such penalties as the council may deem proper, not exceeding one hundred dollars;

make all necessary appropriations therefor; and establish regulations for the prevention and extinguishment of fires. It may prescribe limits within which no building shall be constructed except of brick, stone or other incombustible material, with fireproof roof, and impose a penalty for the violation of such ordinance. It may cause the destruction or removal of any building constructed or repaired in violation of such ordinance, and after such limits are established no special permits shall be given for the erection or repairing of buildings of combustible material. It may regulate the construction and inspection of, and order the suppression of and cleaning of fireplaces, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges or any apparatus used in any building, manufactory or business which may be dangerous in causing or promoting fires, and prescribe limits within which dangerous or obnoxious and offensive business may be carried on.

**Source:** Laws 1901, c. 18, § 48, XXIX, p. 253; R.S.1913, § 4838; C.S.1922, § 4006; C.S.1929, § 16-223.

**16-227. Riots; disorderly conduct; use of explosives; weapons; vagabonds; lights; bonfires; regulation.** A city of the first class may prevent and restrain riots, routs, noises, disturbances, breach of the peace or disorderly assemblies in any street, house or place in the city; regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks or any other dangerous combustible material in the streets, lots, grounds, and alleys or about or in the vicinity of any buildings; regulate, prevent, and punish the carrying of concealed weapons; arrest, regulate, punish, fine or set at work on the streets, or elsewhere, all vagabonds and persons found in said city without visible means of support or some legitimate business; regulate and prevent the transportation or storage of gunpowder or other explosive or combustible articles, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, dynamite, petroleum or any other productions thereof, and other materials of like nature, the use of lights in stables, shops or other places, and the building of bonfires; and regulate and prohibit the piling of building material or any excavation or obstruction in the street.

**Source:** Laws 1901, c. 18, § 48, XXXIV, p. 255; R.S.1913, § 4843; C.S.1922, § 4011; C.S.1929, § 16-228.

**16-230. Drainage; nuisance; weeds; litter; removal; notice; action by city council; violation; penalty; civil action.**

- (1) A city of the first class by ordinance may require lots or pieces of ground within the city or within two miles of the corporate limits of the city to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. It may require the owner or occupant of all lots and pieces of ground within the city to keep the lots and pieces of ground and the adjoining streets and alleys free of any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation, and it may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city.
- (2) Any city of the first class may by ordinance declare it to be a nuisance to permit or maintain any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles.
- (3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating such ordinance, be guilty of a Class V misdemeanor.
- (4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. Within five days after receipt of such notice or publication or posting, whichever is applicable, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or fails to comply with the order to abate and remove the nuisance, the city may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may either
  - (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or
  - (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.
- (5) For purposes of this section:
  - (a) Litter includes, but is not limited to:
    - (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes;
    - (ii) wood, plaster, cement, brick, or stone building rubble;
    - (iii) grass, leaves, and worthless vegetation;

- (iv) offal and dead animals; and
- (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and
- (b) Weeds includes, but is not limited to, bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus* sp.) (toun), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*).

**Source:** Laws 1901, c. 18, § 48, XXXVII, p. 255; R.S.1913, § 4846; Laws 1915, c. 84, § 1, p. 222; C.S.1922, § 4014; C.S.1929, § 16-231; R.S.1943, § 16-230; Laws 1975, LB 117, § 1; Laws 1988, LB 934, § 2; Laws 1991, LB 330, § 1; Laws 1995, LB 42, § 2; Laws 2004, LB 997, § 1. Effective date July 16, 2004.

**17-147. Fire department; organization and equipment.** A second-class city shall have power to procure fire engines, hooks, ladders, buckets and other apparatus, to organize fire engine, hook and ladder, and bucket companies, to prescribe rules of duty and the government thereof with such penalties as the council may deem proper, not exceeding one hundred dollars, and to make all necessary appropriations therefor.

**Source:** Laws 1879, § 39, IX, p. 201; Laws 1881, c. 24, § 1, p. 198; R.S.1913, § 5041; C.S.1922, § 4210; C.S.1929, § 17-149.

**17-534. Waterworks; purchase or construction; bonds; interest; limitation; tax; approval of electors required; exception.**

- (1) Such cities or villages may borrow money or issue bonds in an amount not to exceed twelve percent of the taxable valuation of all the taxable property within such city or village according to the last preceding assessment thereof, for the purchase of steam engines or fire-extinguishing apparatus and for the purchase, construction, and maintenance of such waterworks, mains, portion, or extension of any system of waterworks or water supply or to pay for water furnished such city or village under contract, when authorized as is provided for by subsection (3) of this section.
- (2) Such cities or villages may levy and collect a general tax in the same manner as other municipal taxes are levied and collected in an amount sufficient to pay the interest and principal of the bonds referred to in subsections (1) and (3) of this section, as the same mature, upon the taxable value of all the taxable property within such city or village as shown upon the assessment rolls, in addition to the sum authorized to be levied under section 17-506. All taxes raised by such a levy shall be retained in a fund known as the water fund.
- (3) No money shall be borrowed or bonds issued as referred to in subsections (1) and (2) of this section unless authorized by a majority of the legal votes of such city or village cast for and against the proposition at an election held for that purpose. Notice of the election shall be given by publication in some newspaper published or of general circulation in such city or village for at least two weeks prior to the date of such election. The requirement of this section of a vote of the electors shall not apply when the proceeds of the bonds will be used solely for the maintenance, extension, improvement, or enlargement of any existing system of waterworks or water supply owned by the city or village and the bonds have been ordered issued by a vote of not less than three-fourths of all the city council or board of trustees as the case may be. The bonds shall be the bonds of such city or village and be called water bonds. They shall become due in not to exceed forty years from the date of issue and shall draw interest payable semiannually or annually.

**Source:** Laws 1881, c. 23, § 8, XV, p. 177; Laws 1885, c. 20, § 1, XV, p. 168; Laws 1887, c. 20, § 1, XV, p. 296; Laws 1893, c. 8, § 1, p. 134; Laws 1903, c. 21, § 1, p. 250; Laws 1905, c. 30, § 1, p. 257; Laws 1907, c. 17, § 1, p. 127; R.S.1913, § 5119; Laws 1917, c. 103, § 1, p. 271; Laws 1919, c. 48, § 1, p. 138; Laws 1919, c. 52, § 1, p. 151; Laws 1919, c. 46, § 2, p. 132; C.S.1922, § 4292; Laws 1925, c. 41, § 1, p. 158; C.S.1929, § 17-441; Laws 1935, c. 34, § 1, p. 142; C.S. Supp., 1941, § 17-441; R.S.1943, § 17-534; Laws 1945, c. 30, § 1, p. 147; Laws 1949, c. 24, § 1, p. 96; Laws 1955, c. 50, § 1, p. 169; Laws 1969, c. 51, § 47, p. 301; Laws 1971, LB 83, § 1; Laws 1971, LB 982, § 1; Laws 1979, LB 187, § 53; Laws 1992, LB 719A, § 54.

**17-563. Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; assessment of cost; violation; penalty; civil action.**

- (1) Each city of the second class and village by ordinance may require lots or pieces of ground within the city or village to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. It may require the owner or occupant of any lot or piece of ground within the city or village to keep the lot or piece of ground and the adjoining streets and alleys free of any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation, and it may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or village.
- (2) Any city of the second class and village may by ordinance declare it to be a nuisance to permit or maintain any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles.
- (3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating such ordinance, be guilty of a Class V misdemeanor.
- (4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. Within five days after receipt of such notice or publication or posting, whichever is applicable, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or village or fails to comply with the order to abate and remove the nuisance, the city or village may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city or village may either
  - (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or
  - (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.
- (5) For purposes of this section:
  - (a) Litter includes, but is not limited to:
    - (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes;
    - (ii) wood, plaster, cement, brick, or stone building rubble;
    - (iii) grass, leaves, and worthless vegetation;
    - (iv) offal and dead animals; and
    - (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and
  - (b) Weeds includes, but is not limited to, bindweed (*Convolvulus arvensis*), puncture vine (*Tribulus terrestris*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*), perennial peppergrass (*Lepidium draba*), Russian knapweed (*Centaurea picris*), Johnson grass (*Sorghum halepense*), nodding or musk thistle, quack grass (*Agropyron repens*), perennial sow thistle (*Sonchus arvensis*), horse nettle (*Solanum carolinense*), bull thistle (*Cirsium lanceolatum*), buckthorn (*Rhamnus* sp.) (toun), hemp plant (*Cannabis sativa*), and ragweed (*Ambrosiaceae*).

**Source:** Laws 1879, § 71, p. 219; R.S.1913, § 5137; C.S.1922, § 4312; C.S.1929, § 17-503; R.S.1943, § 17-563; Laws 1991, LB 330, § 2; Laws 1995, LB 42, § 3; Laws 2004, LB 997, § 2; Effective date July 16, 2004.

**17-718. Voluntary fire departments; maintenance; tax; limitation.** The city council in cities and board of trustees in villages having only voluntary fire departments or companies may levy a tax annually of not more than seven cents on each one hundred dollars upon the taxable value of all the taxable property within such cities or villages for the maintenance and benefit of such fire departments or companies. The amount of such tax shall be established at the beginning of the year and shall be included in the adopted budget statement. Upon collection of such tax, the city or village treasurer shall disburse the same upon the order of the chief of the fire department with the approval of the city council or board of trustees.

**Source:** Laws 1921, c. 198, § 1, p. 720; C.S.1922, § 4391; C.S.1929, § 17-589; R.S.1943, § 17-718; Laws 1947, c. 38, § 1, p. 150; Laws 1953, c. 287, § 21, p. 943; Laws 1969, c. 96, § 1, p. 464; Laws 1969, c. 145, § 24, p. 687; Laws 1979, LB 187, § 58; Laws 1992, LB 719A, § 59.

**17-953. Auditorium, municipal building, fire station, community house, other public buildings; acquisition or construction; approval of electors required; exception.**

Cities of the second class and villages are hereby authorized and empowered to

- (1) purchase,
- (2) accept by gift or devise,
- (3) purchase real estate upon which to erect, and
- (4) erect a building or buildings for an auditorium, fire station, municipal building, or community house for housing municipal enterprises and social and recreation purposes, and other public buildings, including the construction of buildings authorized to be constructed by Chapter 72, article 14, and including construction of buildings to be leased in whole or in part by the city or village to any other political or governmental subdivision of the State of Nebraska authorized by law to lease such buildings, and maintain, manage, and operate the same for the benefit of the inhabitants of said cities or villages.

Except as provided in section 17-953.01, before any such purchase can be made or building erected, the question shall be submitted to the electors of such city or village at a general municipal election or at an election duly called for that purpose, or as set forth in section 17-954, and be adopted by a majority of the electors voting on such question.

**Source:** Laws 1935, c. 37, § 1, p. 151; C.S. Supp., 1941, § 17-167; R.S.1943, § 17-953; Laws 1947, c. 40, § 1, p. 153; Laws 1955, c. 45, § 2, p. 162; Laws 1969, c. 97, § 1, p. 465; Laws 1981, LB 220, § 1.

**17-953.01. Purchase or construction of public buildings without bond issue; remonstrance; procedure.** If the funds to be used to finance the purchase or construction of a building under section 17-953 are available other than through a bond issue, then either:

- (1) Notice of the proposed purchase or construction shall be published in a newspaper of general circulation in the city or village and no election shall be required to approve the purchase or construction unless within thirty days after the publication of the notice a remonstrance against the purchase or construction is signed by registered voters of the city or village equal in number to fifteen percent of the registered voters of the city or village voting at the last regular municipal election held therein and is filed with the governing body of the city or village. If the date for filing the remonstrance falls upon a Saturday, Sunday, or legal holiday, the signatures shall be collected within the thirty-day period, but the filing shall be considered timely if filed or postmarked on or before the next business day. If a remonstrance with the necessary number of qualified signatures is timely filed, the question shall be submitted to the voters of the city or village at a general municipal election or a special election duly called for that purpose. If the purchase or construction is not approved, the property involved shall not then, nor within one year following the election, be purchased or constructed; or
- (2) The governing body may proceed without providing the notice and right of remonstrance required in subdivision (1) of this section if the property can be purchased below the fair market value as determined by an appraisal, and there is a willing seller, and the purchase price is less than twenty-five thousand dollars. The purchase shall be approved by the governing body after notice and public hearing as provided in section 18-1755.

**Source:** Laws 1981, LB 220, § 2; Laws 1993, LB 59, § 3; Laws 1995, LB 197, § 2. Effective date September 9, 1995.

**17-954. Auditorium, municipal building, community house, other public buildings; purchase or construction; bonds; approval of electors required; exception.** The mayor and council of such city or the chairman and board of trustees of such village, as the case may be, adopting the proposition to make such purchase or erect such building or buildings for the purposes set forth in section 17-953 shall have the power to borrow money and pledge the property and credit of the city or village upon its negotiable bonds; PROVIDED, no such bonds shall be issued until after the same have been authorized by a majority vote of the electors voting on the proposition of their issuance, at a general municipal election or at a special election called for the submission of such proposition; AND PROVIDED FURTHER, the question of such purchase or erection of such a building or buildings, as set forth in section 17-953, and the question of the issuance of the negotiable bonds referred to in this section may be submitted as one question at a general municipal or special election if so ordered by resolution or ordinance. Notice of the time and place of said election shall be given by publication in some legal newspaper

printed in or of general circulation in such city or village three successive weeks immediately prior thereto. No such election for the issuance of such bonds shall be called until a petition therefor signed by at least ten percent of the legal voters of said city or village has been presented to the council or to the board of trustees. The number of voters voting at the last regular municipal election prior to the presenting of such petition shall be deemed the number of votes in said city or village for the purpose of determining the sufficiency of such petition. The question of bond issues for such purpose in such cities or villages when defeated shall not be resubmitted for six months from and after the date of such election; PROVIDED, that when the building to be constructed is to be used by the State of Nebraska or its agency or agencies under a lease authorized by Chapter 72, article 14, or the building is to be leased by any other political or governmental subdivision of the State of Nebraska, when the combined area of the building to be leased by the state or its agency or agencies and the political or governmental subdivision of the State of Nebraska is more than fifty percent of the area of the building, and when such sum does not exceed two million dollars then no such vote of the electors will be required.

**Source:** Laws 1935, c. 37, § 2, p. 151; C.S. Supp., 1941, § 17-168; R.S. 1943, § 17-954; Laws 1947, c. 40, § 2, p. 154; Laws 1969, c. 97, § 2, p. 466.

**18-1201. Tax; amount; purposes.** All cities and villages organized under the laws of the State of Nebraska may levy a special tax each year of not more than five cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village for the special purposes set forth in this section. Such special levy shall be made by the same officers or board and be levied in the same manner as general city or village taxes. Revenue raised by such a special levy may be used for purchasing and maintaining public safety equipment, including, but not limited to, vehicles or rescue or emergency first-aid equipment for a fire or police department of such city or village, for purchasing real estate for fire or police station quarters or facilities, for erecting, building, altering, or repairing fire or police station quarters or facilities, for purchasing, installing, and equipping an emergency alarm or communication system, or for paying off bonds authorized by section 18-1202. Such revenue may be accumulated in a sinking fund or sinking funds to be used for any such purpose.

**Source:** Laws 1915, c. 218, § 1, p. 487; C.S. 1922, § 4469; C.S. 1929, § 18-801; R.S. 1943, § 18-1201; Laws 1945, c. 33, § 1, p. 154; Laws 1953, c. 287, § 29, p. 947; Laws 1963, c. 81, § 1, p. 289; Laws 1969, c. 102, § 1, p. 477; Laws 1979, LB 187, § 70; Laws 1988, LB 369, § 1; Laws 1992, LB 719A, § 71; Laws 1993, LB 58, § 1. Effective date September 9, 1993.

**18-1202. Tax anticipation bonds; issuance; interest; redemption.** Any city or village which has levied or intends to levy a tax as authorized by section 18-1201 for the purposes stated in such section may anticipate the collection of such taxes, including the anticipation of collections from levies to be made in future years, and for such purpose may issue tax anticipation bonds which shall be payable in not exceeding twenty years and may bear interest, payable annually or semiannually, at such rate or rates as the mayor and council or chairperson and board of trustees may determine. The total of principal and interest payable on such bonds in any calendar year shall not exceed ninety percent of the anticipated tax collection for such calendar year on the assumption that the taxable valuation for such city or village in all succeeding years shall be the same as the taxable valuation most recently determined prior to passage of the ordinance authorizing such bonds and applying the tax levy made or agreed to be made by the city or village, but not exceeding five cents on each one hundred dollars, and using tax due and delinquency dates in effect at the time of passage of the bond ordinance. The city or village may agree in such bond ordinance to make and to continue to make a levy under section 18-1201 until such bonds and interest thereon are fully paid. Such bonds shall be secured by such tax so assessed and levied and shall be payable only out of the funds derived from such tax. It shall be the duty of such city or village on receipt of such taxes to hold the same as a separate fund to the amount of the bonds so issued and the interest thereon for the purpose of paying or redeeming such bonds.

**Source:** Laws 1915, c. 218, § 2, p. 487; C.S. 1922, § 4470; C.S. 1929, § 18-802; R.S. 1943, § 18-1202; Laws 1947, c. 48, § 1, p. 167; Laws 1969, c. 51, § 66, p. 313; Laws 1972, LB 884, § 1; Laws 1979, LB 187, § 71; Laws 1988, LB 369, § 2; Laws 1992, LB 719A, § 72; Laws 1993, LB 58, § 2. Effective date September 9, 1993.

**18-1706. Fire, police, and emergency service; provision outside limits of municipality.** Any city or village may by resolution authorize its fire or police departments or any portion thereof to provide fire, police, and emergency service outside of the limits of the municipality either within or without the state.

**Source:** Laws 1959, c. 55, § 1, p. 248; Laws 1959, c. 56, § 1, p. 249.

**18-1707. Services, vehicles, and equipment; authority to contract for; requirements.** Any city or village shall

have authority to contract with other political subdivisions, government agencies, public corporations, private persons, or groups for:

- (1) compensation for services rendered by it or
- (2) the use of vehicles and equipment of the city or village.

The services shall be of a type which the city or village is empowered to perform and the vehicles or equipment shall be of a type which the city or village is empowered to use, as otherwise provided by law. Any person performing the services shall have completed any training requirements of his or her profession as required by law. The compensation agreed upon shall be a legal charge and collectible by the entity rendering such services in any court of competent jurisdiction.

**Source:** Laws 1959, c. 55, § 2, p. 248; Laws 1984, LB 782, § 1.

**18-1708. Municipal employees; serving outside corporate limits; regular line of duty.** All municipal employees serving outside the corporate limits of the municipality as authorized in sections 18-1706 to 18-1709 shall be considered and held as serving in their regular line of duties as fully as if they were serving within the corporate limits of their own municipality.

**Source:** Laws 1959, c. 55, § 3, p. 249; Laws 1959, c. 56, § 2, p. 250; Laws 1988, LB 369, § 3.  
Effective date July 9, 1988.

**18-1709. Fire protection; fire apparatus; emergency vehicles; contract with other municipalities.** Each and every municipality of this state is hereby authorized and empowered to make arrangements and contracts with any other municipality for the purpose of fire protection and for the use of fire apparatus and emergency vehicles and equipment. **Source:** Laws 1959, c. 55, § 4, p. 249.

**18-1712. Fire training school; jointly sponsored; trainees; costs and expenses.** Any city or village in the State of Nebraska may pay from municipal funds the cost of training and the expenses of such members from each fire company as designated by its governing body to attend the fire training school jointly sponsored by the Nebraska State Volunteer Firefighter's Association, the State Fire Marshal, the Nebraska Forest Service-Fire Control, a division of the University of Nebraska Institute of Agriculture and Natural Resources, and the Nebraska Emergency Management Agency and held periodically at the state fire training school.

**Source:** Laws 1959, c. 58, § 1, p. 251; Laws 1961, c. 53, § 5, p. 199; Laws 1963, c. 83, § 1, p. 291; Laws 1994, LB 1027, § 1; Laws 1996, LB 43, § 2.

**18-1713. Fire training school; maintained by primary or metropolitan city; trainees; costs and expenses.** Any city or village in the State of Nebraska shall be authorized and empowered to enter into a contract with a fire department of any primary or metropolitan city that maintains a fire training school for its own firemen, to train such firemen as it might designate and may pay from municipal funds the cost of such training and all of the expenses of such designated trainees during the time that they are undergoing such training.

**Source:** Laws 1959, c. 58, § 2, p. 252.

**18-1714. Fire training school; approved by State Fire Marshal and Nebraska Emergency Management Agency; attendance.** Any city or village in the State of Nebraska is hereby authorized to send any person or persons designated by its governing body to attend any fire training school operating within the State of Nebraska and that has been approved as a proper fire department training school for such purposes by the State Fire Marshal and the Nebraska Emergency Management Agency.

**Source:** Laws 1959, c. 58, § 3, p. 252; Laws 1996, LB 43, § 3.

**18-1722. Buildings; repair, rehabilitate, or demolish; remove; cost; special assessment; civil action.** If any owner of any building or structure fails, neglects, or refuses to comply with notice by or on behalf of any city or village to repair, rehabilitate, or demolish and remove a building or structure which is an unsafe building or structure and a public nuisance, the city or village may proceed with the work specified in the notice to the property owner. A statement of the cost of such work shall be transmitted to the governing body. The governing body may:

- (1) Levy the cost as a special assessment against the lot or real estate upon which the building or structure is located. Such special assessment shall be a lien on the real estate and shall be collected in the manner provided for special assessments; or
- (2) Collect the cost from the owner of the building or structure and enforce the collection by civil action in any court of competent jurisdiction.

**Source:** Laws 1969, c. 101, § 1, p. 476; Laws 1990, LB 964, § 1. Effective date July 10, 1990.



**18-1722.01. Property or building; unsafe or unfit for human occupancy; duties.** Whenever the governing body of a municipality of the metropolitan class has decided by resolution or a municipality of any other class has made a determination that a property is unsafe or unfit for human occupancy because of one or more violations of its minimum standard housing ordinance or has decided by resolution or other determination, whichever is applicable, that a building is unsafe because of one or more violations of its dangerous building code ordinance, it shall be the duty of such municipality to post the property accordingly, and to file a copy of such determination or resolution in the office of the register of deeds of the county to be recorded. No fee shall be charged for such recording or for the release of such recording.

**Source:** Laws 1973, LB 373, § 1; Laws 1974, LB 654, § 1.

**18-1723. Firefighter; police officer; presumption of death or disability; rebuttable.** Whenever any firefighter who has served a total of five years as a member of a paid fire department of any city in this state or any police officer of any city or village, including any city having a home rule charter, shall suffer death or disability as a result of hypertension or heart or respiratory defect or disease, there shall be a rebuttable presumption that such death or disability resulted from accident or other cause while in the line of duty for all purposes of Chapter 15, article 10, sections 16-1001 to 16-1042, and any firefighter's or police officer's pension plan established pursuant to any home rule charter, the Legislature specifically finding the subject of this section to be a matter of general statewide concern. Such rebuttable presumption shall apply in any action or proceeding arising out of death or disability incurred prior to December 25, 1969, and which has not been processed to final administrative or judicial conclusion prior to such date.

**Source:** Laws 1969, c. 281, § 1, p. 1048; Laws 1985, LB 3, § 3. Effective date September 6, 1985.

**19-1825. Act, how cited.** Sections 19-1825 to 19-1847 shall be known and may be cited as the Civil Service Act.

**Source:** Laws 1985, LB 372, § 4. Effective date September 6, 1985.

**19-1826. Terms, defined.** As used in the Civil Service Act, unless the context otherwise requires:

- (1) Commission shall mean a civil service commission created pursuant to the Civil Service Act, and commissioner shall mean a member of such commission;
- (2) Appointing authority shall mean:
  - (a) In a mayor and council form of government, the mayor with the approval of the council, except to the extent that the appointing authority is otherwise designated by ordinance to be the mayor or city administrator;
  - (b) in a commission form of government, the mayor and city council or village board;
  - (c) in a village form of government, the village board; and
  - (d) in a city manager plan of government, the city manager;
- (3) Appointment shall mean all means of selecting, appointing, or employing any person to hold any position or employment subject to civil service;
- (4) Municipality shall mean all cities and villages specified in subsection (1) of section 19-1827 having full-time police officers or full-time firefighters;
- (5) Governing body shall mean:
  - (a) In a mayor and council form of government, the mayor and council;
  - (b) in a commission form of government, the mayor and council or village board;
  - (c) in a village form of government, the village board; and
  - (d) in a city manager plan of government, the mayor and council;
- (6) Full-time police officers shall mean police officers in positions which require certification by the Nebraska Law Enforcement Training Center, created pursuant to section 81-1402, who have the power of arrest, who are paid regularly by a municipality, and for whom law enforcement is a full-time career, but shall not include clerical, custodial, or maintenance personnel;
- (7) Full-time firefighter shall mean duly appointed firefighters who are paid regularly by a municipality and for whom firefighting is a full-time career, but shall not include clerical, custodial, or maintenance personnel who are not engaged in fire suppression;
- (8) Promotion or demotion shall mean changing from one position to another, accompanied by a corresponding change in current rate of pay; and
- (9) Position shall mean an individual job which is designated by an official title indicative of the nature of the work.

**Source:** Laws 1943, c. 29, § 23, p. 138; R.S.1943, § 19-1823; Laws 1957, c. 48, § 7, p. 236;

R.S.1943, (1983), § 19-1823; Laws 1985, LB 372, § 5. Effective date September 6, 1985.

**19-1827. Civil service commission; applicability; members; appointment; compensation; term; removal; appeal; quorum.**

- (1) There is hereby created, in cities in the State of Nebraska having a population of more than five thousand and having full-time police officers or full-time firefighters, a civil service commission, except in cities with a population in excess of forty thousand which have or may adopt a home rule charter pursuant to sections 2 to 5 of Article XI of the Constitution of this state. Any city or village having a population of five thousand or less may adopt the Civil Service Act and create a civil service commission by a vote of the electors of such city or village. If any city of the first class which established a civil service commission decreases in population to less than five thousand, as determined by the latest federal census, and continues to have full-time police officers or full-time firefighters, the civil service commission shall be continued for at least four years, and thereafter continued at the option of the local governing body of such city. The members of such commission shall be appointed by the appointing authority.
- (2) The governing body shall by ordinance determine if the commission shall be comprised of three or five members. The members of the civil service commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such municipality for at least three years immediately preceding such appointment, and an elector of the county wherein such person resides. If the commission is comprised of three members, the term of office of such commissioners shall be six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. If the commission is comprised of five members, the term of office of such members shall be for five years, except that the first members of such commission shall be appointed for different terms, as follows: One to serve for a period of one year, one to serve for a period of two years, one to serve for a period of three years, one to serve for a period of four years, and one to serve for a period of five years. If the municipality determines by ordinance to change from a three-member commission to a five-member commission, or from a five-member commission to a three-member commission, the members of the commission serving before the effective date of such ordinance shall hold office until reappointed or their successors are appointed.
- (3) Any member of the civil service commission may be removed from office for incompetency, dereliction of duty, malfeasance in office, or other good cause by the appointing authority, except that no member of the commission shall be removed until written charges have been preferred, due notice given such member, and a full hearing had before the appointing authority. Any member so removed shall have the right to appeal to the district court of the county in which such commission is located, which court shall hear and determine such appeal in a summary manner. Such an appeal shall be only upon the ground that such judgment or order of removal was not made in good faith for cause, and the hearing on such appeal shall be confined to the determination of whether or not it was so made.
- (4) The members of the civil service commission shall devote due time and attention to the performance of the duties specified and imposed upon them by the Civil Service Act. Two commissioners in a three-member commission and three commissioners in a five-member commission shall constitute a quorum for the transaction of business. Confirmation of the appointment or appointments of commissioners, made under subsection (1) of this section, by any other legislative body shall not be required. At the time of any appointment, not more than two commissioners of a three-member commission, or three commissioners of a five-member commission, including the one or ones to be appointed, shall be registered electors of the same political party.

**Source:** Laws 1943, c. 29, § 1, p. 125; R.S.1943, § 19-1801; Laws 1957, c. 48, § 1, p. 228; Laws 1963, c. 89, § 5, p. 304; Laws 1983, LB 291, § 1; R.S.1943, (1983), § 19-1801; Laws 1985, LB 372, § 6. Effective date September 6, 1985.

**19-1828. Application of act.** The Civil Service Act shall apply to all municipalities, as defined in section 19-1826, in the State of Nebraska specified in subsection (1) of section 19-1827. All present full-time firefighters and full-time police officers of such municipalities and future appointees to such full-time positions shall be subject to civil service.

**Source:** Laws 1943, c. 29, § 2, p. 127; R.S.1943, § 19-1802; Laws 1957, c. 48, § 2, p. 230; R.S.1943, (1983), § 19-1802; Laws 1985, LB 372, § 7. Effective date September 6, 1985.

**19-1829. Employees subject to act; appointment; promotion.** The Civil Service Act shall only apply to full-time firefighters or full-time police officers of each municipality, including any paid full-time police or fire chief of such department. All appointments to and promotions in such department shall be made solely on merit, efficiency, and

fitness, which shall be ascertained by open competitive examination and impartial investigation. If the appointing authority fills a vacancy in a position subject to the Civil Service Act, the appointing authority shall consider factors including, but not limited to:

- (1) The multiple job skills recently or currently being performed by the applicant which are necessary for the position;
- (2) The knowledge, skills, and abilities of the applicant which are necessary for the position;
- (3) The performance appraisal of any applicant who is already employed in the department, including any recent or pending disciplinary actions involving the employee;
- (4) The employment policies and staffing needs of the department together with contracts, ordinances, and statutes related thereto;
- (5) Required federal, state, or local certifications or licenses necessary for the position; and
- (6) The qualifications of the applicants who are already employed in the department and have successfully completed all parts of the examination for the position. No person shall be reinstated in or transferred, suspended, or discharged from any such position or employment contrary to the Civil Service Act.

**Source:** Laws 1943, c. 29, § 3, p. 127; R.S.1943, § 19-1803; Laws 1957, c. 48, § 3, p. 230; Laws 1969, c. 116, § 1, p. 530; R.S.1943, (1983), § 19-1803; Laws 1985, LB 372, § 8. Effective date September 6, 1985.

**Section 19-1830. Civil service commission; organization; meetings; appointment; discharge; duties of commission; enumeration; rules and regulations.**

- (1) Immediately after the appointment of the commission, and annually thereafter, the commission shall organize by electing one of its members chairperson. The commission shall hold meetings as may be required for the proper discharge of its duties. The commission shall appoint a secretary and a chief examiner who shall keep the records of the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe. The commission may merge the positions of secretary and chief examiner and appoint one person to perform the duties of both positions. If the municipality has a personnel officer, the commission shall appoint such personnel officer as secretary and chief examiner, if requested to do so by the appointing authority. The secretary and chief examiner shall be subject to suspension or discharge upon the vote of a majority of the appointed members of the commission.
- (2) The commission shall adopt and promulgate procedural rules and regulations consistent with the Civil Service Act. Such rules and regulations shall provide in detail the manner in which examinations may be held and any other matters assigned by the appointing authority. At least one copy of the rules and regulations, and any amendments, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any amendments shall be given to each full-time firefighter and full-time police officer.
- (3) The commission shall provide that all tests shall be practical and consist only of subjects which will fairly determine the capacity of persons who are to be examined to perform the duties of the position to which an appointment is to be made and may include, but not be limited to, tests of physical fitness and of manual skill and psychological testing.
- (4) The commission shall provide, by the rules and regulations, for a credit of ten percent in favor of all applicants for an appointment under civil service who, in time of war or in any expedition of the armed forces of the United States, have served in and been discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) from the armed forces of the United States and who have equaled or exceeded the minimum qualifying standard established by the appointing authority. These credits shall only apply to entry-level positions as defined by the appointing authority.
- (5) The commission may conduct an investigation concerning and report upon all matters regarding the enforcement and effect of the Civil Service Act and the rules and regulations prescribed. The commission may inspect all institutions, departments, positions, and employments affected by such act to determine whether such act and all such rules and regulations are being obeyed. Such investigations may be conducted by the commission or by any commissioner designated by the commission for that purpose. The commission shall also make a like investigation on the written petition of a citizen, duly verified, stating that irregularities or abuses exist or setting forth, in concise language, the necessity for such an investigation. The commission may be represented in such investigations by the municipal attorney, if authorized by the appointing authority. If the municipal attorney does not represent the commission, the commission may be represented by special counsel appointed by the commission in any such investigation. In the course of such an investigation, the commission, designated commissioner, or chief examiner shall have the power to administer oaths, issue subpoenas to require the attendance of

witnesses and the production by them of books, papers, documents, and accounts appertaining to the investigation, and to cause the deposition of witnesses, residing within or without the state, to be taken in the manner prescribed by law for like depositions in civil actions in the courts of this state. The oaths administered and subpoenas issued shall have the same force and effect as the oaths administered by a district judge in a judicial capacity and subpoenas issued by the district courts of Nebraska. The failure of any person so subpoenaed to comply shall be deemed a violation of the Civil Service Act and be punishable as such. No investigation shall be made pursuant to this section if there is a written accusation concerning the same subject matter against a person in the civil service. Such accusations shall be handled pursuant to section 19-1833.

- (6) The commission shall provide that all hearings and investigations before the commission, designated commissioner, or chief examiner shall be governed by the Civil Service Act and the rules of practice and procedure to be adopted by the commission. In the conduct thereof, they shall not be bound by the technical rules of evidence. No informality in any proceedings or hearing or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the commission, except that no order, decision, rule, or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect unless it is concurred in by a majority of the appointed members of the commission, including the vote of any commissioner making the investigation.
- (7) The commission shall establish and maintain a roster of officers and employees.
- (8) The commission shall provide for, establish, and hold competitive tests to determine the relative qualifications of persons who seek employment in any position and, as a result thereof, establish eligible lists for the various positions.
- (9) The commission shall make recommendations concerning a reduction-in-force policy to the governing body or city manager in a city manager plan of government. The governing body or city manager in a city manager plan of government shall consider such recommendations, but shall not be bound by them in establishing a reduction-in-force policy. Prior to the adoption of a reduction-in-force policy, the governing body or, in the case of a city manager plan, the city manager and the governing body shall, after giving reasonable notice to each police officer and firefighter by first-class mail, conduct a public hearing.
- (10) The governing body shall in all municipalities, except those with a city manager plan in which the city manager shall, adopt a reduction-in-force policy which shall consider factors including, but not limited to:
  - (a) The multiple job skills recently or currently being performed by the employee;
  - (b) The knowledge, skills, and abilities of the employee;
  - (c) The performance appraisal of the employee including any recent or pending disciplinary actions involving the employee;
  - (d) The employment policies and staffing needs of the department together with contracts, ordinances, and statutes related thereto;
  - (e) Required federal, state, or local certifications or licenses; and
  - (f) Seniority.
- (11) The commission shall keep such records as may be necessary for the proper administration of the Civil Service Act.

**Source:** Laws 1943, c. 29, § 4, p. 127; R.S.1943, § 19-1804; Laws 1957, c. 48, § 4, p. 230; R.S.1943, (1983), § 19-1804; Laws 1985, LB 372, § 9; Laws 2005, LB 54, § 3

**19-1831. Civil service; applicant for position; qualifications; fingerprints; when required; restrictions on release.**

- (1) An applicant for a position of any kind under civil service shall be able to read and write the English language, meet the minimum job qualifications of the position as established by the appointing authority, and be of good moral character. An applicant shall be required to disclose his or her past employment history and his or her criminal record, if any, and submit a full set of his or her fingerprints and a written statement of permission authorizing the appointing authority to forward the fingerprints for identification. Prior to certifying to the appointing authority the names of the persons eligible for the position or positions, the commission shall validate the qualifications of such persons.
- (2) The appointing authority shall require an applicant, as part of the application process, to submit a full set of his or her fingerprints along with written permission authorizing the appointing authority to forward the fingerprints to the Federal Bureau of Investigation through the Nebraska State Patrol, for identification. The fingerprint identification shall be solely for the purpose of confirming information provided by the applicant.

- (3) Any fingerprints received by the commission or appointing authority pursuant to a request made under subsection (2) of this section and any information in the custody of the commission or appointing authority resulting from inquiries or investigations made with regard to those fingerprints initiated by the commission or appointing authority shall not be a public record within the meaning of sections 84-712 to 84-712.09 and shall be withheld from the public by the lawful custodians of such fingerprints and information and shall only be released to those lawfully entitled to the possession of such fingerprints and information. Any member, officer, agent, or employee of the commission, appointing authority, or municipality who comes into possession of fingerprints and information gathered pursuant to subsection (2) of this section shall be an official within the meaning of section 84-712.09.

**Source:** Laws 1943, c. 29, § 6, p. 131; R.S.1943, § 19-1806; Laws 1963, c. 93, § 1, p. 317; Laws 1969, c. 116, § 3, p. 531; Laws 1974, LB 811, § 3; Laws 1977, LB 498, § 1; R.S.1943, (1983), § 19-1806; Laws 1985, LB 372, § 10; Laws 1997, LB 116, § 1. Effective date September 13, 1997.

**19-1832. Civil service; employees; discharge; demotion; grounds.** The tenure of a person holding a position of employment under the Civil Service Act shall be only during good behavior. Any such person may be removed or discharged, suspended with or without pay, demoted, reduced in rank, or deprived of vacation, benefits, compensation, or other privileges, except pension benefits, for any of the following reasons:

- (1) Incompetency, inefficiency, or inattention to or dereliction of duty;
- (2) Dishonesty, prejudicial conduct, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, any act of omission or commission tending to injure the public service, any willful failure on the part of the employee to properly conduct himself or herself, or any willful violation of the Civil Service Act or the rules and regulations adopted pursuant to such act;
- (3) Mental or physical unfitness for the position which the employee holds;
- (4) Drunkenness or the use of intoxicating liquors, narcotics, or any other habit-forming drug, liquid, or preparation to such an extent that the use interferes with the efficiency or mental or physical fitness of the employee or precludes the employee from properly performing the functions and duties of his or her position;
- (5) Conviction of a felony or misdemeanor tending to injure the employee's ability to effectively perform the duties of his or her position; or
- (6) Any other act or failure to act which, in the judgment of the civil service commissioners, is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

**Source:** Laws 1943, c. 29, § 7, p. 131; R.S.1943, § 19-1807; R.S.1943, (1983), § 19-1807; Laws 1985, LB 372, § 11. Effective date September 6, 1985.

**19-1833. Civil service; employees; discharge; demotion; procedure; investigation; appeal.**

- (1) No person in the civil service who shall have been permanently appointed or inducted into civil service under the Civil Service Act shall be removed, suspended, demoted, or discharged except for cause and then only upon the written accusation of the police or fire chief, appointing authority, or any citizen or taxpayer.
- (2) The governing body of the municipality shall establish by ordinance procedures for acting upon such written accusations and the manner by which suspensions, demotions, removals, discharges, or other disciplinary actions may be imposed by the appointing authority. At least one copy of the rules and regulations, and any amendments to such rules and regulations, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any such amendments shall be given to each full-time firefighter and full-time police officer.
- (3) Any person so removed, suspended, demoted, or discharged may, within ten days after being notified by the appointing authority of such removal, suspension, demotion, or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The governing body of the municipality shall establish procedures by ordinance consistent with this section by which the commission shall conduct such investigation. At least one copy of the rules and regulations, and any amendments to such rules and regulations, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any such amendments shall be given to each full-time firefighter and full-time police officer. Such procedures shall comply with minimum due process requirements. The commission may be represented in such investigation and hearing by the municipal attorney if authorized by the appointing authority. If the municipal attorney does not represent the commission, the commission may be represented by special counsel appointed by the commission for any such investigation and hearing. The investigation shall be confined to the determination of the

question of whether or not such removal, suspension, demotion, or discharge was made in good faith for cause which shall mean that the action was not arbitrary or capricious and was not made for political or religious reasons.

- (4) After such investigation, the commission shall hold a public hearing after giving reasonable notice to the accused of the time and place of such hearing. Such hearing shall be held not less than ten or more than twenty days after filing of the written demand for an investigation and a decision shall be rendered no later than ten days after the hearing. At such hearing the accused shall be permitted to appear in person and by counsel and to present his or her defense. The commission may affirm the action taken if such action of the appointing authority is supported by a preponderance of the evidence. If it shall find that the removal, suspension, demotion, or discharge was made for political or religious reasons or was not made in good faith for cause, it shall order the immediate reinstatement or reemployment of such person in the position or employment from which such person was removed, suspended, demoted, or discharged, which reinstatement shall, if the commission in its discretion so provides, be retroactive and entitle such person to compensation and restoration of benefits and privileges from the time of such removal, suspension, demotion, or discharge. The commission upon such hearing, in lieu of affirming the removal, suspension, demotion, or discharge, may modify the order of removal, suspension, demotion, or discharge by directing a suspension, with or without pay, for a given period and the subsequent restoration to duty or demotion in position or pay. The findings of the commission shall be certified in writing to and enforced by the appointing authority.
- (5) If such judgment or order be concurred in by the commission or a majority thereof, the accused or governing body may appeal to the district court. Such appeal shall be taken within forty-five days after the entry of such judgment or order by serving the commission with a written notice of appeal stating the grounds and demanding that a certified transcript of the record and all papers, on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify, and file such transcript with and deliver such papers to the district court. The district court shall proceed to hear and determine such appeal in a summary manner. The hearing shall be confined to the determination of whether or not the judgment or order of removal, discharge, demotion, or suspension made by the commission was made in good faith for cause which shall mean that the action of the commission was based upon a preponderance of the evidence, was not arbitrary or capricious, and was not made for political or religious reasons. No appeal to such court shall be taken except upon such ground or grounds.

If such appeal is taken by the governing body and the district court affirms the decision of the commission, the municipality shall pay to the employee court costs and reasonable attorney's fees incurred as a result of such appeal and as approved by the district court. If such appeal is taken by the governing body and the district court does not affirm the decision of the commission, the court may award court costs and reasonable attorney's fees to the employee as approved by the district court.

**Source:** Laws 1943, c. 29, § 8, p. 132; R.S.1943, § 19-1808; Laws 1957, c. 48, § 6, p. 234; Laws 1959, c. 65, § 2, p. 289; Laws 1969, c. 116, § 4, p. 531; R.S.1943, (1983), § 19-1808; Laws 1985, LB 372, § 12. Effective date September 6, 1985.

**19-1834. Civil service; municipality provide facilities and assistance.** The municipality shall afford the commission and its members and employees all reasonable facilities and assistance to inspect all books, papers, documents, and accounts applying or in any way appertaining to any and all positions and employments subject to civil service and shall produce such books, papers, documents, and accounts. All municipal officers and employees shall attend and testify whenever required to do so by the commission, the accused, or the appointing authority.

**Source:** Laws 1943, c. 29, § 9, p. 133; R.S.1943, § 19-1809; R.S.1943, (1983), § 19-1809; Laws 1985, LB 372, § 13. Effective date September 6, 1985.

**19-1835. Civil service; vacancies; procedure.**

- (1) Whenever a position subject to the Civil Service Act becomes vacant, the appointing authority shall make requisition upon the commission for the names and addresses of the persons eligible for appointment and may decline to fill such vacancy for an indefinite period.
- (2) The commission, upon request of the appointing authority, shall establish and maintain a list, for a period of time established by the appointing authority, of those eligible for appointment to or promotion within the department. Such list shall be established and maintained through the open competitive examinations required by section 19-1829, with the time and date of any examination to be established by the

appointing authority. Any person having satisfactorily passed the examination for any position shall be placed on the list of those eligible for appointment or promotion to such position.

- (3) Upon the request of the appointing authority, the commission shall certify the names of the persons who are the three highest on the eligible list, following the most recent examination, and whose qualifications have been validated by the commission for the vacant position. If fewer than three names are on the eligible list the commission shall certify those that do appear. If the commission certifies fewer than three names for each vacancy to the appointing authority, the appointing authority may appoint one of such persons to fill the vacancy, may decline to fill the vacancy, or may order that another examination be held by the civil service commission.
- (4) If a vacancy occurs and there is no eligible list for the position or if the commission has not certified persons from the eligible list, a temporary appointment may be made by the appointing authority. Such temporary appointment shall not continue for a period longer than four months. No person shall receive more than one temporary appointment or serve more than four months as a temporary appointee in any one fiscal year.
- (5) To enable the appointing authority to exercise a choice in the filling of positions, no appointment, employment, or promotion in any position in the service shall be deemed complete until after the expiration of a period of three to six months' probationary service for firefighters and not less than six months nor more than one year after certification by the Nebraska Law Enforcement Training Center for police officers, as may be provided in the rules of the civil service commission, during which time the appointing authority may terminate the employment of the person appointed by it if, during the performance test thus afforded and upon an observation or consideration of the performance of duty, the appointing authority deems such person unfit or unsatisfactory for service in the department. The appointing authority may appoint one of the other persons certified by the commission and such person shall likewise enter upon such duties until some person is found who is fit for appointment, employment, or promotion for the probationary period provided and then the appointment, employment, or promotion shall be complete.

**Source:** Laws 1943, c. 29, § 10, p. 134; R.S.1943, § 19-1810; Laws 1967, c. 97, § 1, p. 295; R.S.1943, (1983), § 19-1810; Laws 1985, LB 372, § 14. Effective date September 6, 1985.

**19-1836. Civil service; creation or elimination of positions.** All positions subject to the Civil Service Act shall be created or eliminated by the governing body of the municipality. The Civil Service Act shall not be construed to infringe upon the power and authority of

- (1) the governing body of the municipality to establish pursuant to section 16-310, 17-108, or 17-209 the salaries and compensation of all employees employed hereunder or
- (2) the city manager, pursuant to Chapter 19, article 6, to establish the salaries and compensation of employees within the compensation schedule or ranges established by the governing body for the positions.

**Source:** Laws 1943, c. 29, § 11, p. 135; R.S.1943, § 19-1811; R.S.1943, (1983), § 19-1811; Laws 1985, LB 372, § 15. Effective date September 6, 1985.

**19-1837. Civil service; employees; salaries; compliance with act.** No treasurer, auditor, comptroller, or other officer or employee of any municipality subject to the Civil Service Act shall approve the payment of or be in any manner concerned in paying, auditing, or approving any salary, wage, or other compensation for services to any person subject to the jurisdiction and scope of the Civil Service Act unless the person to receive such salary, wage, or other compensation has been appointed or employed in compliance with such act.

**Source:** Laws 1943, c. 29, § 12, p. 135; R.S.1943, § 19-1812; R.S.1943, (1983), § 19-1812; Laws 1985, LB 372, § 16. Effective date September 6, 1985.

**19-1838. Civil service; leave of absence.** A leave of absence, with or without pay, may be granted by the appointing authority to any person under civil service. The appointing authority shall give notice of such leave to the commission. All appointments for temporary employment resulting from such leaves of absence shall be made from the eligible list, if any, of the civil service.

**Source:** Laws 1943, c. 29, § 13, p. 136; R.S.1943, § 19-1813; R.S.1943, (1983), § 19-1813; Laws 1985, LB 372, § 17. Effective date September 6, 1985.

**19-1839. Civil service commission; conduct of litigation; representation.** It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of the Civil Service Act and of the rules of the commission. The commission may be represented in such suits and all

investigations pursuant to the Civil Service Act by the municipal attorney if authorized by the appointing authority. If the municipal attorney does not represent the commission, the commission may be represented by special counsel appointed by it in any particular case.

**Source:** Laws 1943, c. 29, § 14, p. 136; R.S.1943, § 19-1814; R.S.1943, (1983), § 19-1814; Laws 1985, LB 372, § 18. Effective date September 6, 1985.

**19-1840. Civil service; obstructing examinations.** No commissioner or any other person shall by himself or herself or in cooperation with one or more persons

- (1) defeat, deceive, or obstruct any person in respect to the right of examination according to the rules and regulations made pursuant to the Civil Service Act,
- (2) falsely mark, grade, estimate, or report upon the examination and standing of any person examined or certified in accordance with such act or aid in so doing,
- (3) make any false representation concerning the same or concerning the persons examined,
- (4) furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined or certified or to be examined or certified, or
- (5) persuade any other person or permit or aid in any manner any other person to impersonate him or her in connection with any examination, application, or request to be so examined.

**Source:** Laws 1943, c. 29, § 15, p. 136; R.S.1943, § 19-1815; R.S.1943, (1983), § 19-1815; Laws 1985, LB 372, § 19. Effective date September 6, 1985.

**19-1841. Civil service; political service disregarded.** No person holding any position subject to civil service shall be under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever. No person shall be removed, reduced in position or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote, or in any manner change the official rank, employment, or compensation of any person under civil service, or promise or threaten to do so, for giving, withholding, or neglecting to make any contribution of money, services, or any other valuable thing for any political purpose.

**Source:** Laws 1943, c. 29, § 16, p. 136; R.S.1943, § 19-1816; R.S.1943, (1983), § 19-1816; Laws 1985, LB 372, § 20. Effective date September 6, 1985.

**19-1842. Municipality; duty to enact appropriate legislation; failure; effect.** Any municipality subject to the Civil Service Act shall, after September 6, 1985, enact appropriate legislation for carrying into effect such act. The failure of the governing body of any such municipality to do so shall be a violation of the Civil Service Act and shall be punishable as such.

**Source:** Laws 1943, c. 29, § 17, p. 137; R.S.1943, § 19-1817; R.S.1943, (1983), § 19-1817; Laws 1985, LB 372, § 21. Effective date September 6, 1985.

**19-1843. Municipality; duty to provide quarters and equipment; failure; effect.** The governing body of every municipality subject to the Civil Service Act shall provide the commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated, lighted, and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons in each such municipality subject to the Civil Service Act. Failure upon the part of the governing body to do so shall be violation of the Civil Service Act and shall be punishable as such.

**Source:** Laws 1943, c. 29, § 18, p. 137; R.S.1943, § 19-1818; R.S.1943, (1983), § 19-1818; Laws 1985, LB 372, § 22. Effective date September 6, 1985.

**19-1844. Municipality; duty to create commission; failure; effect.** Within ninety days after a municipality becomes subject to the Civil Service Act, it shall be the duty of the governing body of such municipality subject to such act to create a civil service commission, as provided in section 19-1827, and the failure upon the part of such governing body to do so shall be a violation of the Civil Service Act and shall be punishable as such.

**Source:** Laws 1943, c. 29, § 19, p. 137; R.S.1943, § 19-1819; R.S.1943, (1983), § 19-1819; Laws 1985, LB 372, § 23. Effective date September 6, 1985.

**19-1845. Commission; duty to organize; rules and regulations; failure; effect.** It shall be the duty of each commission appointed subject to the Civil Service Act to immediately organize and adopt and promulgate



procedural rules and regulations, consistent with the purpose of such act, to carry out such act. The failure upon the part of such commission or any individual member to do so shall be violation of the Civil Service Act and shall be punishable as such.

**Source:** Laws 1943, c. 29, § 20, p. 137; R.S.1943, § 19-1820; R.S.1943, (1983), § 19-1820; Laws 1985, LB 372, § 24. Effective date September 6, 1985.

**19-1846. Municipality; duty to make appropriation.** It shall be the duty of each municipality subject to the Civil Service Act to appropriate each fiscal year, from the general funds of such municipality, a sum of money sufficient to pay the necessary expenses involved in carrying out the purposes of such act, including, but not limited to, reasonable attorney's fees for any special counsel appointed by the commission when the municipal attorney is not authorized by the appointing authority to represent the commission. The appointing authority may establish the hourly or monthly rate of pay of such special counsel.

**Source:** Laws 1943, c. 29, § 21, p. 137; R.S.1943, § 19-1821; R.S.1943, (1983), § 19-1821; Laws 1985, LB 372, § 25. Effective date September 6, 1985.

**19-1847. Violations; penalty.** Any person who shall willfully violate any of the provisions of the Civil Service Act shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1943, c. 29, § 22, p. 138; R.S.1943, § 19-1822; R.S.1943, (1983), § 19-1822; Laws 1985, LB 372, § 26. Effective date September 6, 1985.

**23-335.** Repealed. Laws 1988, LB 893, s. 18.

**23-378.** Transferred to Section 13-303.

**25-505.** Repealed. Laws 1983, LB 447, s. 104.

**25-505.01. Service of summons; methods.**

- (1) Unless otherwise limited by statute or by the court, a plaintiff may elect to have service made by any of the following methods:
    - (a) Personal service which shall be made by leaving the summons with the individual to be served;
    - (b) Residence service which shall be made by leaving the summons at the usual place of residence of the individual to be served, with some person of suitable age and discretion residing therein; or
    - (c) Certified mail service which shall be made by
      - (i) within ten days of issuance, sending the summons to the defendant by certified mail with a return receipt requested showing to whom and where delivered and the date of delivery, and
      - (ii) filing with the court proof of service with the signed receipt attached.
  - (2) Failure to make service by the method elected by the plaintiff does not affect the validity of the service.
- Source:** Laws 1983, LB 447, § 22; Laws 1984, LB 845, § 21.

**25-508.01. Service on individual.**

- (1) An individual party, other than a person under the age of fourteen years, may be served by personal, residence, or certified mail service.
  - (2) A party under the age of fourteen years may be served by personal, residence, or certified mail service upon an adult person with whom the minor resides and who is the minor's parent, guardian, or person having care of the minor. If none of these can be found, a party under the age of fourteen years may be served by personal service.
  - (3) If the person to be served is an incapacitated person for whom a conservator or guardian has been appointed or is confined in any institution, notice of the service shall be given to the conservator, guardian, or superintendent or similar official of the institution. Failure to give such notice does not affect the validity of the service on the incapacitated person.
- Source:** Laws 1983, LB 447, § 25.

**25-509.01. Service on corporation.** A corporation may be served by personal, residence, or certified mail service upon any officer, director, managing agent, or registered agent, or by leaving the process at the corporation's registered office with a person employed therein, or by certified mail service to the corporation's registered office.

**Source:** Laws 1983, LB 447, § 26.

**25-510.02. Service on state or political subdivision.**

- (1) The State of Nebraska, any state agency as defined in section 81-8,210, and any employee of the state as defined in section 81-8,210 sued in an official capacity may be served by leaving the summons at the office of the Attorney General with the Attorney General, deputy attorney general, or someone designated in writing by the Attorney General, or by certified mail service addressed to the office of the Attorney General.
  - (2) Any county, city, or village of this state may be served by personal, residence, or certified mail service upon the chief executive officer, or clerk.
  - (3) Any political subdivision of this state, as defined in subdivision (1) of section 13-903, other than a county, city, or village, may be served by personal, residence, or certified mail service upon the chief executive officer, clerk, secretary, or other official whose duty it is to maintain the official records, or any member of the governing board or body, or by certified mail service to the principal office of the political subdivision.
- Source:** Laws 1983, LB 447, § 27.

**25-511.02. Service on dissolved corporation.** A dissolved corporation may be served by personal, residence, or certified mail service upon any appointed receiver. If there is no receiver, a dissolved corporation may be served by personal, residence, or certified mail service upon any person who at the time of dissolution was an officer, director, managing agent, or registered agent, or upon any officer or director designated in the last annual report filed with the Secretary of State.

**Source:** Laws 1983, LB 447, § 28.

**25-512.01. Service on partnership.** A partnership or limited partnership may be served by personal, residence, or certified mail service upon any partner except a limited partner, or by certified mail service at its usual place of business, or the process may be left at its usual place of business with an employee of the partnership or limited partnership.

**Source:** Laws 1983, LB 447, § 29.

**25-513.01. Service on unincorporated association.** An unincorporated association may be served by personal, residence, or certified mail service upon an officer or managing agent, or by certified mail service to the association at its usual place of business, or by leaving the process at its usual place of business with an employee of the unincorporated association.

**Source:** Laws 1983, LB 447, § 30.

**25-514.01. Service on agent.** Any party may be served by personal, residence, or certified mail service upon an agent authorized by appointment or by law to receive service of process.

**Source:** Laws 1983, LB 447, § 31.

**25-517.02. Substitute and constructive service.** Upon motion and showing by affidavit that service cannot be made with reasonable diligence by any other method provided by statute, the court may permit service to be made

- (1) by leaving the process at the defendant's usual place of residence and mailing a copy by first-class mail to the defendant's last-known address,
- (2) by publication, or
- (3) by any manner reasonably calculated under the circumstances to provide the party with actual notice of the proceedings and an opportunity to be heard.

**Source:** Laws 1983, LB 447, § 33.

**25-518.01. Service by publication.** Service may be made by publication

- (1) when such service is elsewhere provided for by statute or
- (2) when ordered by the court.

**Source:** Laws 1983, LB 447, § 34.

**25-519. Service by publication; how made; contents.** The publication shall be made once in each week for three successive weeks in some newspaper printed in the county where the complaint is filed if there is any printed in such county and, if there is not, in some newspaper printed in this state of general circulation in that county. It shall contain a summary statement of the claim for relief of the complaint, mention the court wherein it is filed, and

notify the person or persons thus to be served when they are required to answer.

**Source:** R.S.1867, Code § 79, p. 405; R.S.1913, § 7642; C.S.1922, § 8585; C.S.1929, § 20-519; R.S.1943, § 25-519; Laws 1971, LB 47, § 1; Laws 1996, LB 299, § 19; Laws 2002, LB 876, § 16.

**25-520. Service by publication; when complete; how proved; affidavit of publication.** Service by publication shall be deemed complete when it shall have been made in the manner and for the time prescribed in section 25-519; and such service shall be proved by the affidavit of the printer or his foreman or principal clerk, or other person knowing the same.

**Source:** R.S.1867, Code § 80, p. 406; R.S.1913, § 7643; C.S.1922, § 8586; C.S.1929, § 20-520.

**25-520.01. Service by publication; mailing of published notice; requirements; waiver; when mailing not required.** In any action or proceeding of any kind or nature, as defined in section 25-520.02, where a notice by publication is given as authorized by law, a party instituting or maintaining the action or proceeding with respect to notice or his attorney shall within five days after the first publication of notice send by United States mail a copy of such published notice to each and every party appearing to have a direct legal interest in such action or proceeding whose name and post office address are known to him. Proof by affidavit of the mailing of such notice shall be made by the party or his attorney and shall be filed with the officer with whom filings are required to be made in such action or proceeding within ten days after mailing of such notice. Such affidavit of mailing of notice shall further be required to state that such party and his attorney, after diligent investigation and inquiry, were unable to ascertain and do not know the post office address of any other party appearing to have a direct legal interest in such action or proceeding other than those to whom notice has been mailed in writing. It shall not be necessary to serve the notice prescribed by this section upon any competent person, fiduciary, partnership, or corporation, who has waived notice in writing, entered a voluntary appearance, or has been personally served with summons or notice in such proceeding.

**Source:** Laws 1957, c. 80, § 1, p. 325; Laws 1959, c. 97, § 1, p. 416.

**25-520.02. Action or proceeding, defined.** The term action or proceeding means all actions and proceedings in any court and any action or proceeding before the governing bodies of municipal corporations, public corporations, and political subdivisions for the equalization of special assessments or assessing the cost of any public improvement.

**Source:** Laws 1957, c. 80, § 2, p. 326.

**25-520.03. Sections, how construed.** Sections 25-520.01 to 25-520.03 are intended by the Legislature to be cumulative and supplemental to existing legislation. They are deemed to be a matter of general statewide concern. Such sections apply to all parties authorized by law to give notice by publication, including the State of Nebraska, its governmental subdivisions, and all public and municipal corporations.

**Source:** Laws 1957, c. 80, § 3, p. 326.

**25-522. Service by publication; plaintiff may designate newspaper.** It shall be the lawful right of any plaintiff or petitioner in any suit, action or proceeding, pending or prosecuted in any of the courts of this state, in which it is necessary to publish in a newspaper any notice or copy of an order, growing out of, or connected with, such action or proceeding, either by himself or his attorney of record, to designate in what newspaper such notice or copy of order shall be published; and it shall be the duty of the judges of the district court, county judges, or any other officer charged with the duty of ordering, directing or superintending the publication of any of such notices, or copies of orders, to strictly comply with such designations when made in accordance with the provisions of this section.

**Source:** Laws 1909, c. 94, § 1, p. 399; R.S.1913, § 7645; C.S.1922, § 8588; C.S.1929, § 20-522.

**25-523. Legal newspaper, defined; prior publications legalized.** No newspaper shall be considered a legal newspaper for the publication of legal and other official notices unless the same shall have a bona fide circulation of at least three hundred paid subscriptions weekly, and shall have been published within the county for fifty-two successive weeks prior to the publication of such notice, and be printed, either in whole or in part, in an office maintained at the place of publication; PROVIDED, that nothing in this section shall invalidate the publication in a newspaper which has suspended publication or been printed outside of the county, on account of fire, flood or other unavoidable accident, for not to exceed ten weeks, in the year last preceding the first publication of a legal notice, advertising or publication; PROVIDED FURTHER, that all publications made prior to May 22, 1941, in a newspaper which has, on account of flood, fire or other unavoidable accident, suspended publication or been

printed in an office outside of the county, are hereby legalized; PROVIDED FURTHER, that all newspapers, otherwise complying herewith, which have, on account of flood, fire or other unavoidable accident, suspended publication or been printed in an office outside of the county, for not to exceed ten weeks in any year, are hereby legalized; AND PROVIDED FURTHER, that the publication of legal or other official notices in the English language in foreign language newspapers published within the county for fifty-two successive weeks prior to the publication of such a notice, and printed either in whole or in part in an office maintained at the place of publication, shall also be legal.

**Source:** Laws 1915, c. 221, § 1, p. 490; Laws 1919, c. 133, § 1, p. 309; C.S.1922, § 8589; C.S.1929, § 20-523; Laws 1935, c. 40, § 1, p. 157; Laws 1941, c. 31, § 1, p. 139; C.S. Supp.,1941, § 20-523; Laws 1943, c. 44, § 1(1), p. 189; R.S.1943, § 25-523; Laws 1972, LB 661, § 17.

**25-1808. Actions between state agencies, boards, commissions, constitutional officers, and members of the Legislature; costs awarded; when.** Notwithstanding sections 25-1803, 25-21,210, 81-8,228, and 84-216, whenever a state agency, board, commission, or constitutional officer, any person acting in behalf of the agency, board, commission, or constitutional officer, or the Legislature brings a legal action or proceeding against another agency, board, commission, or constitutional officer or the Legislature, and fails to substantially prevail in the action or proceeding, as determined by the court, the party against whom the action is brought shall be awarded fees and other expenses incident to the action or proceeding by the court. Fees and expenses that shall be awarded include reasonable attorney's fees, reasonable expert witness fees, and court costs. If the Attorney General represented the agency, board, commission, constitutional officer, or Legislature, he or she shall prepare a billing of the services provided by his or her office, and the amount billed less any reduction made by the court shall be paid to the Legal Services Fund. The agency, board, commission, constitutional officer, or Legislature responsible for the payment of fees and expenses pursuant to this section shall make payment from funds appropriated to the agency, board, commission, constitutional officer, or Legislature unless a special fund or appropriation has been made for such purpose by the Legislature.

**Source:** Laws 1993, LB 781, § 1.

## Crimes and Punishments

### 28-105. Felonies; classification of penalties; sentences; where served; eligibility for probation.

- (1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into nine classes which are distinguished from one another by the following penalties which are authorized upon conviction:
  - Class I felony ..... Death
  - Class IA felony ..... Life imprisonment
  - Class IB felony ..... Maximum-life imprisonment  
Minimum-twenty years imprisonment
  - Class IC felony ..... Maximum-fifty years imprisonment  
Mandatory minimum-five years imprisonment
  - Class ID felony ..... Maximum-fifty years imprisonment  
Mandatory minimum-three years imprisonment
  - Class II felony ..... Maximum-fifty years imprisonment  
Minimum-one year imprisonment
  - Class III felony ..... Maximum-twenty years imprisonment, or twenty-five thousand dollars fine, or both
  - Class IIIA felony .... Minimum-one year imprisonment  
Maximum-five years imprisonment, or ten thousand dollars fine, or both
  - Class IV felony ..... Minimum-none  
Maximum-five years imprisonment, or ten thousand dollars fine, or both  
Minimum-none
- (2) All sentences of imprisonment for Class IA, IB, IC, ID, II, and III felonies and sentences of one year or more for Class IIIA and IV felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. Sentences of less than one year shall be served in the county jail except as provided in this subsection. If the department certifies that it has programs and facilities available for persons sentenced to terms of less than one year, the court may order that any sentence of six months or more be served in any institution under the jurisdiction of the department. Any such certification shall be given by the department to the State Court Administrator, who shall forward copies thereof to each judge having jurisdiction to sentence in felony cases.
- (3) Nothing in this section shall limit the authority granted in sections 29-2221 and 29-2222 to increase sentences for habitual criminals.
- (4) A person convicted of a felony for which a mandatory minimum sentence is prescribed shall not be eligible for probation.

**Source:** Laws 1977, LB 38, § 5; Laws 1989, LB 592, § 1; Laws 1995, LB 371, § 2; Laws 1997, LB 364, § 1; Laws 1998, LB 900, § 1; Laws 1998, LB 1266, § 1.

### Section 28-106. Misdemeanors; classification of penalties; sentences; where served.

- (1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:
  - Class I misdemeanor ..... Maximum -- not more than one year imprisonment, or one thousand dollars fine, or both  
Minimum -- none
  - Class II misdemeanor ..... Maximum -- six months imprisonment, or one thousand dollars fine, or both  
Minimum -- none
  - Class III misdemeanor ..... Maximum -- three months imprisonment, or five hundred dollars fine, or both  
Minimum -- none
  - Class IIIA misdemeanor ..... Maximum -- seven days imprisonment, five hundred dollars fine, or both  
Minimum -- none
  - Class IV misdemeanor ..... Maximum -- no imprisonment, five hundred dollars fine  
Minimum -- one hundred dollars fine

Class V misdemeanor.....Maximum -- no imprisonment, one hundred dollars fine

Minimum -- none

Class W misdemeanor.....Driving under the influence or implied consent

First conviction

Maximum -- sixty days imprisonment and five hundred dollars fine

Mandatory minimum -- seven days imprisonment and four hundred dollars fine

Second conviction

Maximum -- six months imprisonment and five hundred dollars fine

Mandatory minimum -- thirty days imprisonment and five hundred dollars fine

Third conviction

Maximum -- one year imprisonment and six hundred dollars fine

Mandatory minimum -- ninety days imprisonment and six hundred dollars fine

- (2) Sentences of imprisonment in misdemeanor cases shall be served in the county jail, except that in the following circumstances the court may, in its discretion, order that such sentences be served in institutions under the jurisdiction of the Department of Correctional Services:

- (a) If the sentence is for a term of one year upon conviction of a Class I misdemeanor;
- (b) If the sentence is to be served concurrently or consecutively with a term for conviction of a felony; or
- (c) If the Department of Correctional Services has certified as provided in section 28-105 as to the availability of facilities and programs for short-term prisoners and the sentence is for a term of six months or more.

**Source:** Laws 1977, LB 38, § 6; Laws 1982, LB 568, § 1; Laws 1986, LB 153, § 1; Laws 1992, LB 291, § 1; Laws 1998, LB 309, § 1; Laws 2002, LB 82, § 3; Laws 2005, LB 594, § 1; Effective date September 4, 2005.

#### **28-201. Criminal attempt; conduct; penalties.**

- (1) A person shall be guilty of an attempt to commit a crime if he or she:
  - (a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or
  - (b) Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime.
- (2) When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he or she intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.
- (3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.
- (4) Criminal attempt is:
  - (a) A Class II felony when the crime attempted is a Class I, Class IA, or Class IB felony;
  - (b) A Class III felony when the crime attempted is a Class II felony;
  - (c) A Class IIIA felony when the crime attempted is assault in the first degree under section 28-308, sexual assault in the second degree under section 28-320, manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense controlled substances listed in Schedule I, II, or III of section 28-405 under section 28-416 except for an exceptionally hazardous drug, incest under section 28-703, child abuse under subsection (5) of section 28-707, assault on an officer in the second degree under section 28-930, or assault by a confined person with a deadly or dangerous weapon under section 28-932;
  - (d) A Class IV felony when the crime attempted is a Class III felony not listed in subdivision (4)(c) of this section;
  - (e) A Class I misdemeanor when the crime attempted is a Class IIIA or Class IV felony;
  - (f) A Class II misdemeanor when the crime attempted is a Class I misdemeanor; and
  - (g) A Class III misdemeanor when the crime attempted is a Class II misdemeanor.

**Source:** Laws 1977, LB 38, § 10; Laws 1997, LB 364, § 2; Laws 1998, LB 1266, § 3.

**28-501. Building, defined.** As used in this article, unless the context otherwise requires, building shall mean a structure which has the capacity to contain, and is designed for the shelter of man, animals, or property, and includes ships, trailers, sleeping cars, aircraft, or other vehicles or places adapted for overnight accommodations

of persons or animals, or for carrying on of business therein, whether or not a person or animal is actually present. If a building is divided into units for separate occupancy, any unit not occupied by the defendant is a building of another.

**Source:** Laws 1977, LB 38, § 100.

**28-502. Arson, first degree; penalty.**

- (1) A person commits arson in the first degree if he or she intentionally damages a building by starting a fire or causing an explosion when another person is present in the building at the time and either
  - (a) the actor knows that fact, or
  - (b) the circumstances are such as to render the presence of a person therein a reasonable probability.
- (2) A person commits arson in the first degree if a fire is started or an explosion is caused in the perpetration of any robbery, burglary, or felony criminal mischief when another person is present in the building at the time and either
  - (a) the actor knows that fact, or
  - (b) the circumstances are such as to render the presence of a person therein a reasonable probability.
- (3) Arson in the first degree is a Class II felony.

**Source:** Laws 1977, LB 38, § 101; Laws 1981, LB 83, § 1.

**28-503. Arson, second degree; penalty.**

- (1) A person commits arson in the second degree if he or she intentionally damages a building by starting a fire or causing an explosion or if a fire is started or an explosion is caused in the perpetration of any robbery, burglary, or felony criminal mischief.
- (2) The following affirmative defenses may be introduced into evidence upon prosecution for a violation of this section:
  - (a) No person other than the accused has a security or proprietary interest in the damaged building, or, if other persons have such interests, all of them consented to his or her conduct; or
  - (b) The accused's sole intent was to destroy or damage the building for a lawful and proper purpose.
- (3) Arson in the second degree is a Class III felony.

**Source:** Laws 1977, LB 38, § 102; Laws 1981, LB 83, § 2.

**28-504. Arson, third degree; penalty.**

- (1) A person commits arson in the third degree if he intentionally sets fire to, burns, causes to be burned, or by the use of any explosive, damages or destroys, or causes to be damaged or destroyed, any property of another without his consent, other than a building or occupied structure.
- (2) Arson in the third degree is a Class IV felony if the damages amount to one hundred dollars or more.
- (3) Arson in the third degree is a Class I misdemeanor if the damages are less than one hundred dollars.

**Source:** Laws 1977, LB 38, § 103.

**28-505. Burning to defraud insurer; penalty.** Any person who, with the intent to deceive or harm an insurer, sets fire to or burns or attempts so to do, or who causes to be burned, or who aids, counsels or procures the burning of any building or personal property, of whatsoever class or character, whether the property of himself or of another, which shall at the time be insured by any person, company or corporation against loss or damage by fire, commits a Class IV felony.

**Source:** Laws 1977, LB 38, § 104.

**28-506. Lawful burning of property; training and safety promotion purposes; permit.** Property may be lawfully destroyed by burning such structures as condemned by law, structures no longer having any value for habitation or business or no longer serving any useful value in the area in which situated, and any other combustible material that will serve to be used for test fires to educate and train members of organized fire departments and promote fire safety anywhere in Nebraska. Before any structure may be destroyed by fire for training and educational purposes it must be reported to the State Fire Marshal and a permit issued for that purpose. Any expense incurred in burning a structure shall be assumed by the organized fire department requesting this type of training for members of its department.

**Source:** Laws 1977, LB 38, § 105.

**28-608. Criminal impersonation; penalty; restitution.**

- (1) A person commits the crime of criminal impersonation if he or she:
  - (a) Assumes a false identity and does an act in his or her assumed character with intent to gain a pecuniary benefit for himself, herself, or another or to deceive or harm another;
  - (b) Pretends to be a representative of some person or organization and does an act in his or her pretended capacity with the intent to gain a pecuniary benefit for himself, herself, or another and to deceive or harm another;
  - (c) Carries on any profession, business, or any other occupation without a license, certificate, or other authorization required by law; or
  - (d) Without the authorization or permission of another and with the intent to deceive or harm another:
    - (i) Obtains or records personal identification documents or personal identifying information; and
    - (ii) Accesses or attempts to access the financial resources of another through the use of a personal identification document or personal identifying information for the purpose of obtaining credit, money, goods, services, or any other thing of value.
- (2)
  - (a) Criminal impersonation is a Class III felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was one thousand five hundred dollars or more.
  - (b) Criminal impersonation is a Class IV felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was five hundred dollars or more but less than one thousand five hundred dollars.
  - (c) Criminal impersonation is a Class I misdemeanor if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was two hundred dollars or more but less than five hundred dollars. Any second or subsequent conviction under this subdivision is a Class IV felony.
  - (d) Criminal impersonation is a Class II misdemeanor if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than two hundred dollars. Any second conviction under this subdivision is a Class I misdemeanor, and any third or subsequent conviction under this subdivision is a Class IV felony.
  - (e) A person found guilty of violating this section may, in addition to the penalties under this subsection, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.
- (3) Criminal impersonation does not mean:
  - (a) The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction;
  - (b) The lawful, good faith exercise of a security interest or a right of setoff by a creditor or a financial institution; or
  - (c) The lawful, good faith compliance by any person when required by any warrant, levy, garnishment, attachment, court order, or other judicial or administrative order, decree, or directive.
- (4) For purposes of this section:
  - (a) Personal identification document means a birth certificate, motor vehicle operator's license, state identification card, public, government, or private employment identification card, social security card, visa work permit, firearm owner's identification card, certificate issued under section 69-2404, or passport or any document made or altered in a manner that it purports to have been made on behalf of or issued to another person or by the authority of a person who did not give that authority. Personal identification document does not include a financial transaction device as defined in section 28-618;
  - (b) Personal identifying information means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person including a person's:
    - (i) Name;
    - (ii) date of birth;
    - (iii) address;
    - (iv) motor vehicle operator's license number or state identification card number as assigned by the State of Nebraska or another state;
    - (v) social security number or visa work permit number;
    - (vi) public, private, or government employer, place of employment, or employment identification number;
    - (vii) maiden name of a person's mother;



- (viii) number assigned to a person's credit card, charge card, or debit card, whether issued by a financial institution, corporation, or other business entity;
  - (ix) number assigned to a person's depository account, savings account, or brokerage account;
  - (x) personal identification number as defined in section 8-157.01;
  - (xi) electronic identification number, address, or routing code used to access financial information;
  - (xii) digital signature;
  - (xiii) telecommunications identifying information or access device;
  - (xiv) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; and
  - (xv) other number or information which can be used to access a person's financial resources; and
- (c) Telecommunications identifying information or access device means a card, plate, code, account number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with other telecommunications identifying information or another telecommunications access device may be used to:
- (i) Obtain money, goods, services, or any other thing of value; or
  - (ii) initiate a transfer of funds other than a transfer originated solely by a paper instrument.

**Source:** Laws 1977, LB 38, § 130; Laws 2002, LB 276, § 2. Effective date July 20, 2002.

**28-907. False reporting; penalty.**

- (1) A person commits the offense of false reporting if he or she:
- (a) Furnishes material information he or she knows to be false to any peace officer or other official with the intent to instigate an investigation of an alleged criminal matter or to impede the investigation of an actual criminal matter;
  - (b) Furnishes information he or she knows to be false alleging the existence of the need for the assistance of an emergency medical service or out-of-hospital emergency care provider or an emergency in which human life or property are in jeopardy to any hospital, emergency medical service, or other person or governmental agency;
  - (c) Furnishes any information, or causes such information to be furnished or conveyed by electric, electronic, telephonic, or mechanical means, knowing the same to be false concerning the need for assistance of a fire department or any personnel or equipment of such department;
  - (d) Furnishes any information he or she knows to be false concerning the location of any explosive in any building or other property to any person; or
  - (e) Furnishes material information he or she knows to be false to any governmental department or agency with the intent to instigate an investigation or to impede an ongoing investigation and which actually results in causing or impeding such investigation.
- (2) (a) False reporting pursuant to subdivisions (1)(a) through (d) of this section is a Class I misdemeanor; and
- (b) False reporting pursuant to subdivision (1)(e) of this section is an infraction.

**Source:** Laws 1977, LB 38, § 192; Laws 1982, LB 347, § 12; Laws 1994, LB 907, § 1; Laws 1997, LB 138, § 36.

**28-908. Interfering with a fireman on official duty; penalty; fireman, defined.**

- (1) A person commits the offense of interfering with a fireman if at any time and place where any fireman is discharging or attempting to discharge any official duties, he willfully:
- (a) Resists or interferes with the lawful efforts of any fireman in the discharge or attempt to discharge an official duty; or
  - (b) Disobeys the lawful orders given by any fireman while performing his duties; or
  - (c) Engages in any disorderly conduct which delays or prevents a fire from being extinguished within a reasonable time; or
  - (d) Forbids or prevents others from assisting or extinguishing a fire or exhorts another person, as to whom he has no legal right or obligation to protect or control, not to assist in extinguishing a fire.
- (2) As used in this section, fireman shall mean any person who is an officer, employee, or member of a fire department or fire-protection or firefighting agency of the federal government, the State of Nebraska, a city, county, city and county, district, or other public or municipal corporation or political subdivision of the

state, whether such person is a volunteer or partly paid or fully paid, while he is actually engaged in firefighting, fire supervision, fire suppression, fire prevention, or fire investigation.

- (3) Interference with a fireman on official duty is a Class I misdemeanor.

**Source:** Laws 1977, LB 38, § 193.

## Explosives Control Act

**28-1213. Explosives, destructive devices, other terms; defined.** For purposes of sections 28-1213 to 28-1239, unless the context otherwise requires:

- (1) Person shall mean any individual, corporation, company, association, firm, partnership, limited liability company, society, or joint-stock company;
- (2) Business enterprise shall mean any corporation, partnership, limited liability company, company, or joint-stock company;
- (3) Explosive materials shall mean explosives, blasting agents, and detonators;
- (4) Explosives shall mean any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including, but not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, ignited cord, igniters, display fireworks as defined in section 28-1241, and firecrackers or devices containing more than one hundred thirty milligrams of explosive composition, but shall not include common fireworks as defined in such section, gasoline, kerosene, naphtha, turpentine, benzine, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches;
- (5) Blasting agent shall mean any material or mixture, intended for blasting which meets the requirements of the federal Hazardous Material Regulations, 49 C.F.R. part 173, subpart C, as such subpart existed on July 20, 2002;
- (6) Detonator shall mean any device containing an initiating or primary explosive that is used for initiating detonation. Excluding ignition or delay charges, a detonator shall not contain more than ten grams of explosive material per unit. Detonator shall include an electric detonator of instantaneous or delay type, a detonator for use with safety fuses, a detonating cord delay connector, and a nonelectric detonator of instantaneous or delay type which consists of detonating cord, shock tube, or any other replacement for electric leg wires;
- (7)
  - (a) Destructive devices shall mean:
    - (i) Any explosive, incendiary, chemical or biological poison, or poison gas
      - (A) bomb,
      - (B) grenade,
      - (C) rocket having a propellant charge of more than four ounces,
      - (D) missile having an explosive or incendiary charge of more than one-quarter ounce,
      - (E) mine,
      - (F) booby trap,
      - (G) Molotov cocktail,
      - (H) bottle bomb,
      - (I) vessel or container intentionally caused to rupture or mechanically explode by expanding pressure from any gas, acid, dry ice, or other chemical mixture, or
      - (J) any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or
    - (ii) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subdivision (7)(a)(i) of this section from which a destructive device may be readily assembled.
  - (b) The term destructive device shall not include
    - (i) any device which is neither designed nor redesigned for use as a weapon to be used against person or property,
    - (ii) any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device,
    - (iii) surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to 10 U.S.C. 4684(2), 4685, or 4686, as such sections existed on July 20, 2002,
    - (iv) any other device which the Nebraska State Patrol finds is not likely to be used as a weapon or is an antique, or
    - (v) any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property;
- (8) Federal permittee shall mean any lawful user of explosive materials who has obtained a federal user permit under 18 U.S.C. chapter 40, as such chapter existed on July 20, 2002;
- (9) Federal licensee shall mean any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers', manufacturers', or dealers' license under 18 U.S.C. chapter 40, as such

- chapter existed on July 20, 2002; and
- (10) Smokeless propellants shall mean solid propellants commonly called smokeless powders in the trade and used in small arms ammunition.

**Source:** Laws 1977, LB 38, § 245; Laws 1988, LB 893, § 1; Laws 1989, LB 215, § 1; Laws 1993, LB 121, § 180; Laws 1993, LB 163, § 1; Laws 1999, LB 131, § 1; Laws 2002, LB 82, § 9. Effective date July 20, 2002.

**28-1214. Explosives control; applicability of act.**

- (1) Sections 28-1213 to 28-1239 shall apply to persons engaged in the manufacture, ownership, possession, storage, use, transportation, purchase, sale, or gift of explosive materials, except as may be otherwise indicated herein.
- (2) Sections 28-1213 to 28-1239 shall not apply to explosive materials while being transported in conformity with federal law or regulations, nor, except as may be otherwise provided in such sections, to the ownership, possession, storage, use, transportation, purchase, or sale of explosive materials by the armed forces of the United States, the National Guard, other reserve components of the armed forces of the United States, and the duly constituted police and firefighting forces of the United States and of the state and its political subdivisions in the lawful discharge of their official duties.

**Source:** Laws 1977, LB 38, § 246.

**28-1215. Unlawful possession of explosive materials, first degree; exception; penalty.**

- (1) Except as provided in subsection (2) of this section, any person who is ineligible to obtain a permit from the Nebraska State Patrol and who possesses or stores explosive materials commits the offense of unlawful possession of explosive materials in the first degree.
- (2) Subsection (1) of this section shall not be applicable to any person transporting explosive materials in accordance with section 28-1235 or to any person who has obtained a permit from the Nebraska State Patrol to store or use such explosive materials or, in the case of a business enterprise, a permit to purchase such explosive materials.
- (3) Unlawful possession of explosive materials in the first degree is a Class IV felony.

**Source:** Laws 1977, LB 38, § 247; Laws 1986, LB 975, § 1; Laws 1989, LB 215, § 2. Effective date August 25, 1989.

**28-1216. Unlawful possession of explosive materials, second degree; penalty.**

- (1) Except as provided in subsection (2) of this section, any person who is eligible to obtain a permit from the Nebraska State Patrol or has valid educational, industrial, commercial, agricultural, or other legitimate need for a permit and who possesses or stores explosive materials without such a permit commits the offense of unlawful possession of explosive materials in the second degree.
- (2) The exclusions provided in subsection (2) of section 28-1215 shall be applicable to this section.
- (3) Unlawful possession of explosive materials in the second degree is a Class I misdemeanor.

**Source:** Laws 1977, LB 38, § 248; Laws 1989, LB 215, § 3. Effective date August 25, 1989.

**28-1217. Unlawful sale of explosives; penalty.**

- (1) Any person who knowingly and intentionally sells, transfers, issues, or gives any explosive materials to any person who does not display a valid permit issued by the Nebraska State Patrol authorizing the storage or use of such explosive materials or, in the case of a business enterprise, a permit to purchase such explosive materials commits the offense of unlawful sale of explosives.
- (2) Unlawful sale of explosives is a Class IV felony.

**Source:** Laws 1977, LB 38, § 249; Laws 1986, LB 975, § 2; Laws 1989, LB 215, § 4. Effective date August 25, 1989.

**28-1218. Use of explosives without a permit; penalty.**

- (1) Any person who uses any explosive materials for any purpose whatsoever, unless such person has obtained a permit from the Nebraska State Patrol to use such explosive materials or uses such explosive materials under the supervision of a permitholder, commits the offense of use of explosives without a permit.
- (2) Except as provided in subsection (3) of this section, use of explosives without a permit is a Class I misdemeanor.
- (3) Upon a showing that the accused was eligible under existing rules and regulations to receive a permit or

had a valid educational, industrial, commercial, agricultural, or other legitimate need for a permit, use of explosives without a permit is a Class II misdemeanor.

- (4) Any person under the direct and proximate supervision of a person possessing a permit to use explosive materials may also use explosive materials under such safety provisions as the Nebraska State Patrol may adopt and promulgate. Federal licensees and permittees shall obtain permits from the Nebraska State Patrol to use explosive materials.

**Source:** Laws 1977, LB 38, § 250; Laws 1989, LB 215, § 5. Effective date August 25, 1989.

**28-1219. Obtaining a permit through false representation; penalty.**

- (1) Any person who knowingly withholds information or makes any false, fictitious, or misrepresented statement or furnishes or exhibits any false, fictitious, or misrepresented identification for the purpose of obtaining a permit or relief from disability under the provisions of sections 28-1213 to 28-1239 or knowingly makes any false entry in a record which such person is required to keep pursuant to such sections or the regulations promulgated pursuant to such sections, commits the offense of obtaining a permit through false representations.
- (2) Obtaining a permit through false representations is a Class IV felony.

**Source:** Laws 1977, LB 38, § 251.

**28-1220. Possession of a destructive device; penalty; permit or license for explosive materials; no defense.**

- (1) Any person who has in his possession a destructive device, as defined in subdivision (7) of section 28-1213, commits the offense of possession of a destructive device.
- (2) A permit or license issued under any state or federal law to possess, own, use, distribute, sell, manufacture, store, or handle in any manner explosive materials shall not be a defense to the crime of possession of a destructive device as defined in this section.
- (3) Possession of a destructive device is a Class IV felony.

**Source:** Laws 1977, LB 38, § 252.

**28-1221. Threatening the use of explosives; placing a false bomb; penalty.**

- (1) A person who conveys any threat or maliciously conveys to any other person false information knowing the same to be false, concerning an attempt or alleged attempt being made or to be made to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of any explosive material or destructive device commits the offense of threatening the use of explosives.
- (2) A person who places or causes to be placed any device or object that by its design, construction, content, or character appears to be or appears to contain a bomb, destructive device, or explosive, but is in fact an inoperative facsimile or imitation of a bomb, destructive device, or explosive, and that such person knows, intends, or reasonably believes is likely to cause public alarm or inconvenience, commits the offense of placing a false bomb.
- (3) Threatening the use of explosives or placing a false bomb is a Class IV felony.

**Source:** Laws 1977, LB 38, § 253; Laws 2002, LB 82, § 10. Effective date July 20, 2002.

**28-1222. Using explosives to commit a felony; penalty.**

- (1) Any person who uses an explosive material or destructive device to commit any felony which may be prosecuted in this state or who possesses an explosive during the commission of any felony which may be prosecuted in this state commits the offense of using explosives to commit a felony.
- (2) Using explosives to commit a felony is a Class III felony.
- (3) In the case of a second or subsequent conviction under this section, using explosives to commit a felony is a Class II felony.

**Source:** Laws 1977, LB 38, § 254.

**28-1223. Using explosives to damage or destroy property; penalty.**

- (1) Any person who, by means of an explosive material or destructive device, maliciously attempts to damage or destroy or does damage or destroy any building, structure, vehicle, or other real or personal property commits the offense of using explosives to damage or destroy property.
- (2) Except as provided under subsection (3) or (4) of this section, using explosives to damage or destroy property is a Class III felony.

- (3) If a personal injury results, using explosives to damage or destroy property is a Class II felony.
- (4) If death results, using explosives to damage or destroy property shall be punished as for conviction of murder in the first degree.

**Source:** Laws 1977, LB 38, § 255.

**28-1224. Using explosives to kill or injure any person; penalty.**

- (1) Any person who uses explosive materials or destructive devices to intentionally kill, injure or intimidate any individual commits the offense of using explosives to kill or injure any person.
- (2) Except as provided in subsection (3) or (4) of this section, using explosives to kill or injure any person is a Class III felony.
- (3) If personal injury results, using explosives to kill or injure any person is a Class II felony.
- (4) If death results, using explosives to kill or injure any person shall be punished as for conviction of murder in the first degree.

**Source:** Laws 1977, LB 38, § 256.

**28-1225. Storing explosives in violation of safety regulations; penalty.**

- (1) Any person who stores any explosive materials or uses in legitimate blasting operations any explosive materials in a manner not in conformity with safety regulations adopted and promulgated by the Nebraska State Patrol or the Secretary of the Treasury of the United States or who stores any explosive materials at a place not designated in a permit to store such explosive materials issued to such person by the Nebraska State Patrol commits the offense of storing explosives in violation of safety regulations.
- (2) Storing explosives in violation of safety regulations is a Class III misdemeanor.

**Source:** Laws 1977, LB 38, § 257; Laws 1989, LB 215, § 6. Effective date August 25, 1989.

**28-1226. Failure to report theft of explosives; penalty.**

- (1) Any person who has knowledge of the theft or loss of explosive materials from his or her stock who fails to report such theft or loss within twenty-four hours of discovery to the Nebraska State Patrol commits the offense of failure to report theft of explosives.
- (2) Failure to report theft of explosives is a Class III misdemeanor.

**Source:** Laws 1977, LB 38, § 258; Laws 1989, LB 215, § 7. Effective date August 25, 1989.

**28-1227. Other violations; penalty.** With the exception of sections 28-1213 to 28-1226, any person who violates any other provision of sections 28-1213 to 28-1239 or rules promulgated pursuant to such sections commits a Class III misdemeanor.

**Source:** Laws 1977, LB 38, § 259.

**28-1228. Presence of explosive material or destructive device in vehicle; prima facie evidence; exception.**

The presence in a vehicle other than a public conveyance of any explosive material or destructive device shall be prima facie evidence that it is in the possession of all persons occupying such vehicle at the time such explosive material or destructive device is found, except that:

- (1) If such explosive material or destructive device is found upon the person of one of the occupants therein; or
- (2) if such explosive material or destructive device is found in a vehicle operated for hire by a driver in the due, lawful, and proper pursuit of his trade, then such presumption shall not apply to the driver. The presumption shall not apply to the occupants of a vehicle being operated in compliance with the requirements of section 28-1225, if explosive material but no destructive device is found therein.

**Source:** Laws 1977, LB 38, § 260.

**28-1229. Explosives control; Nebraska State Patrol; permits; issuance; conditions.**

- (1) The Nebraska State Patrol shall have the authority to issue permits for:
  - (a) The storage of explosive materials;
  - (b) The use of explosive materials; and
  - (c) The purchase of explosive materials by business enterprises.
- (2) The Nebraska State Patrol shall not issue a permit to store or use explosive materials to any person who:
  - (a) Is under twenty-one years of age;
  - (b) Has been convicted in any court of a felony;
  - (c) Is charged with a felony;

- (d) Is a fugitive from justice;
  - (e) Is an unlawful user of any depressant, stimulant, or narcotic drug;
  - (f) Has been admitted as a patient or inmate in a public or private institution for the treatment of a mental or emotional disease or disorder within five years preceding the date of application;
  - (g) Has no reasonable educational, industrial, commercial, agricultural, recreational, or other legitimate need for a permit to store or use explosive materials;
  - (h) Has been convicted in any court of a misdemeanor crime of domestic violence. This includes any misdemeanor conviction involving the use or attempted use of physical force committed by a current or former spouse, parent, or guardian of the victim or by a person with a similar relationship with the victim;
    - (i) Is subject to a court order restraining him or her from harassing, stalking, or threatening an intimate partner or child of such partner; or
  - (j) Is an alien illegally in the United States.
- (3) Upon filing of a proper application and payment of the prescribed fee, and subject to the provisions of sections 28-1213 to 28-1239 and other applicable laws, the Nebraska State Patrol shall issue to such applicant a permit to store explosive materials if:
- (a) The applicant, including, in the case of a corporation, partnership, limited liability company, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, limited liability company, or association, is not a person to whom the Nebraska State Patrol is prohibited to issue a permit under subsection (2) of this section;
  - (b) The applicant has not willfully violated any of the provisions of sections 28-1213 to 28-1239 or of 18 U.S.C. chapter 40; and
  - (c) The applicant has a place of storage for explosive materials which meets such standards of public safety, based on the class, type, and quantity of explosive materials to be stored, and security against theft as prescribed in rules and regulations adopted and promulgated by the Nebraska State Patrol pursuant to sections 28-1213 to 28-1239 and by the Secretary of the Treasury of the United States pursuant to 18 U.S.C. chapter 40.
- (4) A permit for the storage of explosive materials shall specify the class, type, and quantity of explosive materials which are authorized to be stored. It shall also specify the type of security required. A permit for the storage of explosive materials shall be valid for a period of two years unless a shorter period is specified in the permit.
- (5) Upon filing of a proper application and payment of the prescribed fee, and subject to the provisions of sections 28-1213 to 28-1239 and other applicable laws, the Nebraska State Patrol shall issue to such applicant a permit to use explosive materials if:
- (a) The applicant is an individual to whom the Nebraska State Patrol is not prohibited to issue a permit under subsection(2) of this section;
  - (b) The applicant has not willfully violated any of the provisions of sections 28-1213 to 28-1239 or of 18 U.S.C. chapter 40;
  - (c) The applicant has demonstrated and certified in writing that he or she is familiar with all published laws of this state and published local ordinances relating to the use of explosive materials applicable at the place or places he or she intends to use such explosive materials;
  - (d) The applicant has demonstrated that he or she has adequate knowledge, training, and experience in the use of explosive materials of the class and type for which he or she seeks a users permit and has passed a qualifying examination, as prescribed by the Nebraska State Patrol, concerning the use of such explosive materials; and
  - (e) The applicant has been fingerprinted and the fingerprints submitted to the Nebraska State Patrol for a criminal history record check. If no disqualifying record is located at the state level, the fingerprints shall be forwarded by the patrol to the Identification Division of the Federal Bureau of Investigation for a national criminal history record check.
- (6) A permit for the use of explosive materials shall specify the class and type of explosive materials the permitholder is qualified to use. It shall be applicable to the permitholder and to any individual acting under his or her direct personal supervision. A permit may be issued for a single use of explosive materials or, when the applicant is engaged or employed in a business requiring the frequent use of explosive materials, for a period of not more than two years.
- (7) Upon filing of a proper application and payment of the prescribed fees and subject to sections 28-1213 to 28-1239 and other applicable laws, the Nebraska State Patrol shall issue to a business enterprise a permit to purchase explosive materials if:

- (a) The business enterprise has a place of business in this state;
  - (b) No individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the business enterprise is a person to whom the Nebraska State Patrol is prohibited to issue a permit under subsection (2) of this section;
  - (c) An authorized officer of the business enterprise certifies that all explosive materials will be used on the date of purchase of such materials unless such business enterprise is in possession of a valid storage permit; and
  - (d) The business enterprise employs at least one employee having a valid use permit issued under this section.
- (8) A permit for a business enterprise to purchase explosive materials shall specify the class and type of explosive materials which are authorized to be purchased. The class and type of explosive materials covered by such permit shall be the same as those specified in the use permit or permits issued to an employee or employees of the business enterprise. The permit may be issued for a period of up to two years but shall become void if the business enterprise ceases to employ an individual having a valid use permit issued under this section for the class and type of explosive materials covered by the purchase permit of the business enterprise.
- (9) If the applicant is an individual, an application for a permit issued under this section shall include the applicant's social security number.
- Source:** Laws 1977, LB 38, § 261; Laws 1989, LB 215, § 8; Laws 1993, LB 163, § 2; Laws 1993, LB 121, § 181; Laws 1997, LB 752, § 81; Laws 1999, LB 131, § 2.
- Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB 121, section 181, with LB 163, section 2, to reflect all amendments.

**28-1230. Explosives control; permit; denial; notice; appeal.** Whenever the Nebraska State Patrol denies an application for a permit or the renewal thereof, the Nebraska State Patrol shall, within twenty days of such denial, give notice thereof and the reasons therefor in writing to the applicant, personally or by mail, to the address given in the application. The notice of denial shall also advise the applicant of his or her right to appeal and set forth the steps necessary to undertake an appeal and the time limits pertaining thereto. Such denial may be appealed to the Nebraska State Patrol which shall follow the procedures for contested cases required by the Administrative Procedure Act.

**Source:** Laws 1977, LB 38, § 262; Laws 1989, LB 215, § 9. Effective date August 25, 1989.

**28-1231. Explosives control; permit; revocation; grounds.**

- (1) The Nebraska State Patrol may revoke any permit on any ground authorized in subsection (2) of section 28-1229 for the denial of a permit or for any violation of the terms of such permit, for a violation of any provision of this article or of the rules and regulations of the Nebraska State Patrol, or for noncompliance with any order issued by the Nebraska State Patrol within the time specified in such order.
- (2) Revocation of a permit for any ground authorized may be ordered only after giving written notice and an opportunity to be heard to the holder thereof. Revocation proceedings shall be in accordance with the procedure required for contested cases set forth in the Administrative Procedure Act. Such notice may be given to the holder personally or by mail and shall specify the ground or grounds on which it is proposed to revoke the permit. When a permit is revoked, the Nebraska State Patrol may direct the disposition of the explosives held by such permittee. Upon revocation of a permit by the Nebraska State Patrol, the holder thereof shall surrender his or her permit to the Nebraska State Patrol at once or be subject to penalties as provided for elsewhere in sections 28-1213 to 28-1239.

**Source:** Laws 1977, LB 38, § 263; Laws 1989, LB 215, § 10. Effective date August 25, 1989.

**28-1232. Explosive materials; permit; application; form; fees.** An application for a storage, use, or business enterprise purchase permit for explosive materials shall be in such form and contain such information as the Nebraska State Patrol shall by rule and regulation prescribe. Each applicant for a permit shall pay a fee of fifty dollars in the case of a storage permit, ten dollars in the case of a use permit, and ten dollars in the case of a business enterprise purchase permit.

**Source:** Laws 1977, LB 38, § 264; Laws 1982, LB 928, § 21; Laws 1989, LB 215, § 11. Effective date August 25, 1989.

**28-1233. Explosive material; permitholder; records; notice; requirements.**

- (1) Every holder of any permit required under sections 28-1213 to 28-1239 shall maintain an accurate inventory of all explosives in his or her possession and maintain records of transfers to other persons of



explosive materials. Such records shall include a statement of intended use by the transferee and the name, date of birth, place of birth, social security number or taxpayer identification number, and place of residence of any natural person to whom the explosives are transferred. If the explosive materials are transferred to a corporation or other business entity, such records shall include the identity and principal and local places of business and the name, date of birth, place of birth, and place of residence of the natural person acting as the agent of the corporation or other business entity in arranging the transfer. In the case of a federal licensee or permittee who is also a permit holder under the terms of sections 28-1213 to 28-1239, the maintenance of one set of records for the fulfilling of the record-keeping requirements of 18 U.S.C. chapter 40 shall be deemed compliance with the record-keeping requirements of sections 28-1213 to 28-1239.

- (2) Every holder of any storage or business enterprise permit required under sections 28-1213 to 28-1239 shall maintain a log describing the time, place, amount, and type of explosive used in any blasting operations performed by him or her or at his or her direction.
- (3) Every holder of any storage, purchase, or use permit required under sections 28-1213 to 28-1239 shall notify the fire protection district in which any explosive over one pound in weight is to be used or stored twenty-four hours prior to such use or storage, and the holder shall keep a written record in the log describing the time the notice was given, office in the district to which the notice was given, and name of the person in the district notified. The fire protection district may waive the twenty-four-hour notice when the public safety requires such waiver to prevent loss of life or property if such notice is given prior to use or storage. The fire protection district may accept a single notification of ongoing use within a set timeframe not to exceed sixty days. Any holder of a storage, purchase, or use permit who fails to notify the fire protection district pursuant to this subsection is guilty of a Class II misdemeanor.

**Source:** Laws 1977, LB 38, § 265; Laws 1993, LB 163, § 3; Laws 1999, LB 284, § 1.

**28-1234. Permitholders; inspection of records and permits.**

- (1) Permitholders shall make available for inspection at all reasonable times their records kept pursuant to sections 28-1213 to 28-1239 and the rules and regulations adopted and promulgated pursuant to such sections. The Nebraska State Patrol may enter during business hours the premises, including places of storage, of any permitholder for the purpose of inspecting and examining (a) any records or documents required to be kept by such permitholder under sections 28-1213 to 28-1239 or the rules and regulations adopted and promulgated pursuant to such sections and (b) any explosive materials kept or stored by such permitholder at such premises.
- (2) Holders of use permits and business enterprise purchase permits shall retain such permits and make them available to the Nebraska State Patrol on request. Storage permits shall be posted and kept available for inspection at all places of storage of explosive materials.

**Source:** Laws 1977, LB 38, § 266; Laws 1989, LB 215, § 12. Effective date August 25, 1989.

**28-1235. Transportation of explosive materials; permit required.** No person shall transport any explosive materials into this state or within the boundaries of this state unless such person holds a permit as required by sections 28-1213 to 28-1239 or a permit or license issued pursuant to 18 U.S.C. chapter 40. Common carriers by air, highway, railway, or water transporting explosive materials into this state or within the boundaries of this state and contract or private carriers by motor vehicle transporting explosive materials into this state or within the boundaries of this state in the lawful, ordinary course of business and engaged in such business pursuant to certificate or permit by whatever name issued to them by any federal or state officer, agency, bureau, commission, or department shall be excepted from this section except as the Nebraska State Patrol by rule and regulation may otherwise provide. All transportation of explosive materials subject to this section shall be in conformity with such safety rules and regulations as the Nebraska State Patrol may adopt and promulgate.

**Source:** Laws 1977, LB 38, § 267; Laws 1989, LB 215, § 13. Effective date August 25, 1989.

**28-1235.01. Resident; bring explosive material into state; when allowed.** Any resident of the State of Nebraska who holds a valid explosive permit issued by the Nebraska State Patrol and who uses explosive material in the conduct of a business or occupation may lawfully purchase explosive materials from a licensed seller located or residing in a state contiguous to the State of Nebraska and bring such explosive material into Nebraska.

**Source:** Laws 1979, LB 477, § 1; Laws 1989, LB 215, § 14. Effective date August 25, 1989.

**28-1236. Nebraska State Patrol; rules and regulations.** The Nebraska State Patrol may adopt and promulgate rules and regulations supplemental to sections 28-1213 to 28-1239 necessary or desirable to assure the public

safety as well as to provide reasonable and adequate protection of the lives, health, and safety of persons employed in the manufacture, storage, transportation, handling, and use of explosives. The Nebraska State Patrol may adopt and promulgate such rules and regulations necessary and proper for the administration of sections 28-1213 to 28-1239 and, together with all other peace officers of the state and its political subdivisions, shall be charged with the enforcement of such sections.

**Source:** Laws 1977, LB 38, § 268; Laws 1988, LB 893, § 2; Laws 1989, LB 215, § 15. Effective date August 25, 1989.

**28-1237. Special law or local ordinance; minimum required standard.** The provisions of sections 28-1213 to 28-1239 and the rules adopted pursuant thereto shall be the minimum standard required and shall supersede any special law or local ordinance inconsistent therewith, and no local ordinance inconsistent therewith shall be adopted, but nothing herein contained shall prevent the enactment by local law or ordinance of additional requirements and restrictions.

**Source:** Laws 1977, LB 38, § 269.

**28-1238. Violations; seizure and disposition of explosives.** Any explosive materials or destructive devices involved in any violation of sections 28-1213 to 28-1239 or any rule or regulation adopted and promulgated pursuant to such sections or in any violation of any other criminal law of this state shall be subject to seizure, and disposition may be made in accordance with the method of disposition directed for contraband in section 29-820, whenever the seized matter results in a judicial civil or criminal action by or against any person or as the Nebraska State Patrol directs in the absence of such judicial action.

**Source:** Laws 1977, LB 38, § 270; Laws 1989, LB 215, § 16. Effective date August 25, 1989.

**28-1239. Explosives control; exceptions to sections; enumerated.** In addition to the exceptions provided in sections 28-1213 to 28-1239, such sections shall not apply to:

- (1) The use of explosive materials in medicines and medicinal agents in forms prescribed by the official United States Pharmacopoeia or the National Formulary;
- (2) The sale, transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any state or political subdivision thereof;
- (3) Small arms ammunition and components thereof;
- (4) The storage or possession of or dealing in black powder used for recreation purposes by a sportsperson;
- (5) The storage or possession of or dealing in smokeless propellants, percussion caps, primers, and other components used by a sportsperson in the reloading of small arms ammunition;
- (6) Bona fide war trophies capable of exploding and innocently found explosive materials possessed under circumstances negating an intent to use the same unlawfully, but the owner thereof shall surrender such items forthwith to any nationally certified hazardous device technician or military explosive ordnance expert upon demand by a law enforcement officer or agency or fire department; and
- (7) The storage in minimum amounts necessary for lawful educational purposes of explosive materials to be used in the natural science laboratories of any state-accredited school system.

**Source:** Laws 1977, LB 38, § 271; Laws 1993, LB 163, § 4. Effective date September 9, 1993.

**28-1240. Unlawful transportation of anhydrous ammonia; penalty; unlawful use of certain containers; penalty.**

- (1) Any person, partnership, limited liability company, firm, or corporation
  - (a) who loads, unloads, transports, or causes to be transported over the public highways of this state anhydrous ammonia in a tank or container with a water gallon capacity of three thousand gallons or less which will not withstand two-hundred-fifty-pounds-per-square-inch gauge pressure or in a tank or container with a water gallon capacity of more than three thousand gallons which will not withstand two-hundred-sixty-five-pounds-per-square inch gauge pressure and does not meet all the other requirements of the United States Department of Transportation Specifications MC 330 or MC 331, as amended and effective September 1, 1965, or
  - (b) who operates any anhydrous ammonia railroad tank cars over the railroads of this state which fail to comply with all of the applicable requirements of the United States Department of Transportation in effect on December 25, 1969, commits the offense of unlawful transportation of anhydrous ammonia.
- (2) Compliance with this section must be shown by an identification plate permanently affixed to a conspicuous place on each tank or container. After July 17, 1986, whenever any tank or container is altered subsequent to its original manufacture, the identification plate of such tank or container shall be changed to indicate proof that the tank or container is able to meet standards prescribed in subsection (1) of this section after the tank or container has been altered. Any tank or container which is so altered without making the appropriate changes on its identification plate shall be considered not in compliance with this section.
- (5) Unlawful transportation of anhydrous ammonia is a Class II misdemeanor.
- (4) Each day of a violation of this section shall constitute a separate offense, and any person, partnership, limited liability company, firm, or corporation operating, loading, or unloading a tank or container not in compliance with this section shall be considered as a separate violator of this section.
- (5) It shall be unlawful for any person to use or cause to be used any tank or container with a water gallon capacity of under three thousand gallons which is or has been used to contain anhydrous ammonia for containing propane or liquefied natural gas. Such unlawful use of a tank or container shall be a Class III misdemeanor.
- (6) Subsection (5) of this section shall not be applicable when the owner of the tank or container can show that the tank or container has been properly prepared for alternative use. Standards for such preparation shall be adopted and promulgated by the State Fire Marshal pursuant to this section.

**Source:** Laws 1977, LB 38, § 272; Laws 1979, LB 476, § 1; Laws 1986, LB 881, § 1; Laws 1993, LB 121, § 182. Effective date September 9, 1993.

## Fireworks

### 28-1239.01. Fireworks display; permit required; fee; sale of display fireworks; regulation.

- (1) No person shall conduct a public exhibition or display of fireworks without first procuring a display permit from the State Fire Marshal. If the applicant is an individual, the application for a display permit shall include the applicant's social security number. Such application for a display permit shall be accompanied by a fee of ten dollars to be deposited in the State Fire Marshal Cash Fund.
- (2) No display fireworks shall be sold or delivered by a licensed distributor to any person who is not in possession of an approved display permit. Sales of display fireworks to persons without an approved display permit shall be subject to sections 28-1213 to 28-1239.

**Source:** Laws 1986, LB 969, § 4; Laws 1993, LB 251, § 1; Laws 1997, LB 752, § 82.

**28-1241. Fireworks; definitions.** As used in sections 28-1239.01 and 28-1241 to 28-1252, unless the context otherwise requires:

- (1) Distributor shall mean any person engaged in the business of making sales of fireworks at wholesale in this state to any person engaged in the business of making sales of fireworks either as a jobber or as a retailer or both;
- (2) Jobber shall mean any person engaged in the business of making sales of fireworks at wholesale to any other person engaged in the business of making sales at retail;
- (3) Retailer shall mean any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than distributors or jobbers;
- (4) Sale shall include barter, exchange, or gift or offer therefore and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;
- (5) Fireworks shall mean any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of common or special fireworks set forth by the United States Department of Transportation in 49 C.F.R.;
- (6) Common fireworks shall mean any small firework device designed to produce visible effects by combustion and which is required to comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission set forth in 16 C.F.R., small devices designed to produce audible effects such as whistling devices, ground devices containing fifty milligrams or less of explosive composition, and aerial devices and firecrackers containing one hundred thirty milligrams or less of explosive composition. Class C explosives as classified by the United States Department of Transportation shall be considered common fireworks;
- (7) Permissible fireworks shall mean only sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, lady fingers, not to exceed seven-eighths of an inch in length or one-eighth inch in diameter, total explosive composition not to exceed fifty milligrams in weight, color wheels, and any other fireworks approved under section 28-1247; and
- (8) Display fireworks shall mean those materials manufactured exclusively for use in public exhibitions or displays of fireworks designed to produce visible or audible effects by combustion, deflagration, or detonation. Display fireworks shall include, but not be limited to, firecrackers containing more than one hundred thirty milligrams of explosive composition, aerial shells containing more than forty grams of explosive composition, and other display pieces which exceed the limits for classification as common fireworks. Class B explosives as classified by the United States Department of Transportation shall be considered display fireworks. Display fireworks shall be considered an explosive as defined in section 28-1213 and shall be subject to sections 28-1213 to 28-1239, except that display fireworks may be purchased, received, and discharged by the holder of an approved display permit issued pursuant to section 28-1239.01.

**Source:** Laws 1977, LB 38, § 273; Laws 1986, LB 969, § 2; Laws 1988, LB 893, § 3. Effective date July 9, 1988.

### 28-1242. Unlawful throwing of fireworks; penalty.

- (1) A person commits the offense of unlawful throwing of fireworks if he or she throws any firework, or any object which explodes upon contact with another object:
  - (a) From or into a motor vehicle;
  - (b) onto any street, highway, or sidewalk;
  - (c) at or near any person;

- (d) into any building; or
  - (e) into or at any group of persons.
- (2) Unlawful throwing of fireworks is a Class III misdemeanor.  
**Source:** Laws 1977, LB 38, § 274; Laws 1986, LB 969, § 3. Effective date July 17, 1986.

**28-1244. Fireworks; unlawful acts.** Except as provided in section 28-1245, it shall be unlawful for any person to possess, sell, offer for sale, bring into this state, or discharge any fireworks other than permissible fireworks.

**Source:** Laws 1977, LB 38, § 276.

**28-1245. Fireworks; when prohibitions not applicable.** Section 28-1244 shall not apply to:

- (1) Any display fireworks purchased from a licensed distributor; or
- (2) Any display fireworks purchased by the holder of a display permit issued pursuant to section 28-1239.01; or
- (3) Any fireworks brought into this state for storage by a licensed distributor and held for sale outside of this state; or
- (4) Any fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal to any holder of a distributor's license; or
- (5) Toy cap pistols or toy caps, each of which does not contain more than twenty-five hundredths of a grain of explosive material.

**Source:** Laws 1977, LB 38, § 277; Laws 1986, LB 969, § 5; Laws 1993, LB 251, § 2. Effective date September 9, 1993.

**28-1246. Fireworks; sale; license required; fees.**

- (1) It shall be unlawful for any person to sell, hold for sale, or offer for sale as a distributor, jobber, or retailer any fireworks in this state unless such person has first obtained a license as a distributor, jobber, or retailer. Application for each such license shall be made to the State Fire Marshal on forms prescribed by him or her. If the applicant is an individual, each application shall include the applicant's social security number. Each application shall be accompanied by the required fee, which shall be five hundred dollars for a distributor's license, two hundred dollars for a jobber's license, and twenty-five dollars for a retailer's license. Each application for a license as a retailer postmarked after June 10 shall be accompanied by an additional fee of fifty dollars. All licenses shall be good only for the calendar year in which issued and shall at all times be displayed at the place of business of the holder thereof.
- (2) The funds received pursuant to this section shall be remitted to the State Treasurer for credit to the State Fire Marshal Cash Fund.

**Source:** Laws 1977, LB 38, § 278; Laws 1982, LB 928, § 22; Laws 1986, LB 853, § 1; Laws 1993, LB 251, § 3; Laws 1997, LB 752, § 83.

**28-1247. Fireworks; submission of samples to determine safety; duties of State Fire Marshal.** Before any permissible fireworks may be sold, held for sale, or offered for sale in this state, they shall first be submitted to the State Fire Marshal for examination to determine their compliance with subdivision (7) of section 28-1241 and their safety for general use. Fireworks not specifically listed in subdivision (7) of section 28-1241 may be added to the list of permissible fireworks by the State Fire Marshal, by rule or regulation, after having been submitted to him or her and tested to determine their safety for general use.

**Source:** Laws 1977, LB 38, § 279; Laws 1988, LB 893, § 4. Effective date July 9, 1988.

**28-1248. Fireworks; importation into state; duties of licensees; retention of invoices for inspection.**

- (1) It shall be unlawful for any person not licensed as a distributor or as a jobber under the provisions of sections 28-1241 to 28-1252 to bring any fireworks into this state.
- (2) It shall be unlawful for any retailer or jobber in this state to sell any fireworks in this state which have not been purchased from a distributor licensed under the provisions of sections 28-1241 to 28-1252.
- (3) Any person licensed under the provisions of sections 28-1241 to 28-1252 shall keep, available for inspection by the State Fire Marshal or his agents, a copy of each invoice for fireworks purchased as long as any fireworks included on such invoice are held in his possession which invoice shall show the license number of the distributor or jobber from which the purchase was made.

**Source:** Laws 1977, LB 38, § 280.

**28-1249 Sale of permissible fireworks; limitations.**

It shall be unlawful to sell any permissible fireworks at retail within this state, outside the limits of any incorporated city or village. Permissible fireworks may be sold at retail only between June 24 and July 5 of each year.

**Source:** Laws 1977, LB 38, § 281; Laws 1999, LB 621, § 1; Laws 2004, LB 1091, § 2. Effective date April 14, 2004.

**28-1250. Fireworks; prohibited acts; violations; penalties.**

- (1) Any person who violates any of the provisions of sections 28-1244 to 28-1249 commits a Class III misdemeanor. If such person is a licensed distributor or jobber he or she shall be subject to the revocation of his or her license for a period of one year.
- (2) It shall be unlawful for any person, association, partnership, limited liability company, or corporation to have in his, her, or its possession any fireworks in violation of any of the provisions of such sections. If any person shall have in his, her, or its possession any fireworks in violation of such sections, a warrant may be issued for the seizure of such fireworks and when the warrant is executed by the seizure of such fireworks, such fireworks shall be safely kept by the magistrate to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the fireworks shall be returned to the person in whose possession they were found. Nothing in such sections shall apply to the transportation of fireworks by regulated carriers.

**Source:** Laws 1977, LB 38, § 282; Laws 1993, LB 121, § 183. Effective date September 9, 1993.

**28-1252. Fireworks; State Fire Marshal; rules and regulations; enforcement of sections.** The State Fire Marshal shall adopt and promulgate reasonable rules and regulations for the enforcement of sections 28-1239.01 and 28-1241 to 28-1252 and, together with all peace officers of the state and its political subdivisions, shall be charged with the enforcement of sections 28-1239.01 and 28-1244 to 28-1249.

**Source:** Laws 1977, LB 38, § 284; Laws 1989, LB 215, § 17. Effective date August 25, 1989.

**28-1251. Unlawful testing or inspection of fire alarms; penalty; certification of applicants; examination; fee.**

- (1) It shall be unlawful for any person, association, partnership limited liability company, or corporation to conduct fire alarm tests and fire alarm inspections without prior written certification by the State Fire Marshal as to the qualifications of such persons conducting such tests and inspections.
- (2) The State Fire Marshal shall formulate reasonable guidelines to determine qualifications for fire alarm inspectors and shall administer an examination pursuant to such guidelines prior to certification of applicants.
- (3) The State Fire Marshal may charge a fee of one hundred dollars to cover costs of administering such examinations.
- (4) Unlawful testing or inspection of fire alarms is a Class III misdemeanor.

**Source:** Laws 1977, LB 38, § 283; Laws 1982, LB 928, § 23; Laws 1993, LB 121, § 184. Effective date September 9, 1993.

**28-1253. Liquefied petroleum gas; prohibited acts; violation; penalty; enforcement.**

- (1) The distribution, sale, or use of refrigerants containing liquefied petroleum gas for use in mobile air conditioning systems is prohibited.
- (2) For purposes of this section:
  - (a) Liquefied petroleum gas means material composed predominantly of any of the following hydrocarbons or mixtures of such hydrocarbons: Propane, propylene, butanes (normal butane or isobutane), and butylenes;
  - (b) Mobile air conditioning system means mechanical vapor compression equipment which is used to cool the driver or passenger compartment of any motor vehicle; and
  - (c) Motor vehicle has the same meaning as in section 60-638.
- (3) Any person violating this section is guilty of a Class IV misdemeanor.
- (4) The State Fire Marshal shall adopt and promulgate rules and regulations for enforcement of this section and, together with peace officers of the state and its political subdivisions, is charged with enforcement of this section.

**Source:** Laws 1999, LB 163, § 2.

**28-1309. Refusing to yield a party line; penalty.**

- (1) A person commits the offense of refusing to yield a party line if he willfully refuses to relinquish a telephone party line, consisting of a subscriber line telephone circuit with two or more main telephone stations connected therewith, each having a distinctive ring or telephone number, after he has been requested to do so to permit another to place a call, in an emergency in which property or human life is in jeopardy and the prompt summoning of aid is essential, unless such party line is already being used for another such emergency call, or willfully interferes with such an emergency message, or requests the use of such a party line by falsely stating that the same is needed for any such purpose, knowing the statement to be false.
- (2) Refusal to yield a party line is a Class III misdemeanor.

**Source:** Laws 1977, LB 38, § 293.

**28-1321. Maintaining a nuisance; penalty; abatement or removal.**

- (1) A person commits the offense of maintaining a nuisance if he erects, keeps up or continues and maintains any nuisance to the injury of any part of the citizens of this state.
- (2) The erecting, continuing, using, or maintaining of any building, structure, or other place for the exercise of any trade, employment, manufacture, or other business which, by occasioning noxious exhalations, noisome or offensive smells, becomes injurious and dangerous to the health, comfort, or property of individuals or the public; the obstructing or impeding, without legal authority, of the passage of any navigable river, harbor, or collection of water; or the corrupting or rendering unwholesome or impure of any watercourse, stream, or water; or unlawfully diverting any such watercourse from its natural course or state to the injury or prejudice of others; and the obstructing or encumbering by fences, building, structures or otherwise of any of the public highways or streets or alleys of any city or village, shall be deemed nuisances.
- (3) A person guilty of erecting, continuing, using, maintaining or causing any such nuisance shall be guilty of a violation of this section, and in every such case the offense shall be construed and held to have been committed in any county whose inhabitants are or have been injured or aggrieved thereby.
- (4) Maintenance of nuisances is a Class III misdemeanor.

- (5) The court, in case of conviction of such offense, shall order every such nuisance to be abated or removed.  
**Source:** Laws 1977, LB 38, § 305.



## Search and Seizure

### **29-110. Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.**

- (1) Except as otherwise provided by law, no person shall be prosecuted for any felony unless the indictment is found by a grand jury within three years next after the offense has been done or committed or unless a complaint for the same is filed before the magistrate within three years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.
- (2) Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any misdemeanor or other indictable offense below the grade of felony or for any fine or forfeiture under any penal statute unless the suit, information, or indictment for such offense is instituted or found within one year and six months from the time of committing the offense or incurring the fine or forfeiture or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars and to imprisonment not exceeding three months.
- (3) Except as otherwise provided by law, no person shall be prosecuted for kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813, 28-813.01, or 28-1463.03 when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.
- (4) No person shall be prosecuted for a violation of the Securities Act of Nebraska under section 8-1117 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.
- (5) There shall not be any time limitations for prosecution or punishment for treason, murder, arson, forgery, sexual assault in the first or second degree under section 28-319 or 28-320, or sexual assault of a child under section 28-320.01; nor shall there be any time limitations for prosecution or punishment for sexual assault in the third degree under section 28-320 when the victim is under sixteen years of age at the time of the offense.
- (6) The time limitations prescribed in this section shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301.
- (7) The time limitations prescribed in this section shall not extend to any person fleeing from justice.
- (8) When any suit, information, or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is limited by this section, then the suit, information, or indictment shall be brought or exhibited within the time limited by such statute.
- (9) If any suit, information, or indictment is quashed or the proceedings set aside or reversed on writ of error, the time during the pendency of such suit, information, or indictment so quashed, set aside, or reversed shall not be reckoned within this statute so as to bar any new suit, information, or indictment for the same offense.
- (10) The changes made to this section by Laws 2004, LB 943, shall apply to offenses committed prior to April 16, 2004, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.
- (11) The changes made to this section by Laws 2005, LB 713, shall apply to offenses committed prior to September 4, 2005, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

**Source:** G.S.1873, c. 58, § 256, p. 783; R.S.1913, § 8910; C.S.1922, § 9931; C.S.1929, § 29-110; R.S.1943, § 29-110; Laws 1965, c. 147, § 1, p. 489; Laws 1989, LB 211, § 1; Laws 1990, LB 1246, § 10; Laws 1993, LB 216, § 10; Laws 2004, LB 943, § 8; Laws 2005, LB 713, § 2; Effective date September 4, 2005.

**Cross References:** Nebraska Criminal Code, see section 28-101. Securities Act of Nebraska, see section 8-1123.

**29-403. Warrant; who may issue.** Judges of the district court and judges of the county court shall have power to

issue process for the apprehension of any person charged with a criminal offense. Clerk magistrates shall have the power to issue such process as provided in section 24-519.

**Source:** G.S. p. 789; R.S.1913, § 8939; C.S.1922, § 9963; C.S.1929, § 29-403; R.S.1943, § 29-403; Laws 1972, LB 1032, § 166; Laws 1984, LB 13, § 51; Laws 1986, LB 529, § 28. Operative date July 1, 1986.

**29-404. Complaint; filing; procedure; warrant; issuance.** No complaint shall be filed with the magistrate, unless such complaint is in writing and upon oath, signed by the prosecuting attorney or by any other complainant. If the complainant be other than the prosecuting attorney or a city or village attorney prosecuting the violation of a municipal ordinance, he shall either have the consent of the prosecuting attorney or shall furnish to the magistrate a bond with good and sufficient sureties in such amount as the magistrate shall determine to indemnify the person complained against for wrongful or malicious prosecution. Whenever a complaint shall be filed with the magistrate, charging any person with the commission of an offense against the laws of this state, it shall be the duty of such magistrate to issue a warrant for the arrest of the person accused, if he shall have reasonable grounds to believe that the offense charged has been committed. The prosecuting attorney shall consent to the filing of such complaint if he is in possession of sufficient evidence to warrant the belief that the person named as defendant in such complaint is guilty of the crime alleged and can be convicted thereof. The Attorney General shall have the same power to consent to the filing of complaints as the prosecuting attorneys have in their respective counties.

**Source:** G.S. p. 790; R.S.1913, § 8940; C.S.1922, § 9964; C.S.1929, § 29-404; R.S.1943, § 29-404; Laws 1965, c. 148, § 1, p. 490; Laws 1975, LB 168, § 2; Laws 1977, LB 497, § 1.

**29-404.01. Arrest without warrant; supplemental provisions.** The provisions of sections 29-404.01 to 29-404.03 shall be supplemental and in addition to any other laws relating to the subject of arrest.

**Source:** Laws 1967, c. 172, § 1, p. 487.

**29-404.02. Arrest without warrant; when.**

- (1) Except as provided in section 42-928, a peace officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed:
  - (a) A felony;
  - (b) A misdemeanor, and the officer has reasonable cause to believe that such person either (i) will not be apprehended unless immediately arrested, (ii) may cause injury to himself or herself or others or damage to property unless immediately arrested, (iii) may destroy or conceal evidence of the commission of such misdemeanor, or (iv) has committed a misdemeanor in the presence of the officer; or
  - (c) One or more of the following acts to one or more household members, whether or not committed in the presence of the peace officer:
    - (i) Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument;
    - (ii) Placing, by physical menace, another in fear of imminent bodily injury; or
    - (iii) Engaging in sexual contact or sexual penetration without consent as defined in section 28-318.
- (2) For purposes of this section:
  - (a) Household members shall include spouses or former spouses, children, persons who are presently residing together or who have resided together in the past, persons who have a child in common whether or not they have been married or have lived together at any time, other persons related by consanguinity or affinity, and persons who are presently involved in a dating relationship with each other or who have been involved in a dating relationship with each other; and
  - (b) Dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.

**Source:** Laws 1967, c. 172, § 2, p. 487; Laws 1989, LB 330, § 1; Laws 2004, LB 613, § 6. Effective date July 16, 2004.

**29-404.03. Arrest without warrant; reasonable cause; conditions.** In determining whether reasonable cause exists to justify an arrest, a law enforcement officer may take into account all facts and circumstances, including those based upon any expert knowledge or experience which the officer in fact possessed, which a prudent officer

would judge relevant to the likelihood that a crime has been committed and that the person to be arrested has committed it, and for such purpose the officer may rely on information he receives from any informant whom it is reasonable under the circumstances to credit, whether or not at the time of making the arrest the officer knows the informant's identity.

**Source:** Laws 1967, c. 172, § 3, p. 487.

**29-405. Warrant; complaint; provide security for costs; when.** When the offense charged is a misdemeanor, the magistrate, before issuing the warrant, may, at his discretion, require the complainant to acknowledge himself responsible for costs in case the complaint shall be dismissed, which acknowledgment of security for costs shall be entered upon the docket; and the magistrate on dismissal may, if in his opinion the complaint was without probable cause, enter a judgment against such complainant for costs made thereon. In case the magistrate shall consider such complainant wholly irresponsible, such magistrate may, in his discretion, refuse to issue any warrant unless the complainant procure some responsible surety to the satisfaction of such magistrate for the costs in case of such dismissal, and such surety shall acknowledge himself so bound, and the magistrate shall enter it on his docket.

**Source:** G.S. p. 790; R.S.1913, § 8941; C.S.1922, § 9965; C.S.1929, § 29-405.

**29-406. Warrant; to whom directed; contents.** The warrant shall be directed to the sheriff of the county or to the marshal or other police officer of a city or village and, reciting the substance of the accusation, shall command the officer to take the accused and bring him or her before the magistrate or court issuing the warrant or some other magistrate having cognizance of the case to be dealt with according to law. No seal shall be necessary to the validity of the warrant.

**Source:** G.S. p. 790; R.S.1913, § 8942; C.S.1922, § 9966; C.S.1929, § 29-406; R.S.1943, § 29-406; Laws 1972, LB 1032, § 167; Laws 1988, LB 1030, § 24. Effective date April 14, 1988.

**29-407. Warrant; magistrate may name person to execute.** The magistrate issuing any such warrant may make an order thereon authorizing a person to be named in such warrant to execute the warrant. The person named in such order may execute such warrant anywhere in the state by apprehending and conveying such offender before the magistrate issuing such warrant or before some other magistrate of the same county. All sheriffs, coroners, and others when required in their respective counties shall aid and assist in the execution of such warrant.

**Source:** G.S. p. 790; R.S.1913, § 8943; C.S.1922, § 9967; C.S.1929, § 29-407; R.S.1943, § 29-407; Laws 1988, LB 1030, § 25. Effective date April 14, 1988.

**29-812. Search warrant; issuance; fees.** A search warrant authorized by sections 29-812 to 29-821 may be issued by any judge of the district court, Court of Appeals, or Supreme Court for execution anywhere within the State of Nebraska. A similar search warrant authorized by such sections may be issued by any judge of the county court within his or her district or, subject to section 24-519, by any clerk magistrate within the county in which the property sought is located.

**Source:** Laws 1963, c. 161, § 1, p. 570; Laws 1973, LB 226, § 17; Laws 1974, LB 735, § 2; Laws 1982, LB 928, § 24; Laws 1984, LB 13, § 56; Laws 1986, LB 529, § 30; Laws 1991, LB 732, § 72; Laws 1992, LB 1059, § 22.

**29-813. Search warrant; issuance; limitation; purpose.**

- (1) A warrant may be issued under sections 29-812 to 29-821 to search for and seize any property
  - (a) stolen, embezzled, or obtained under false pretenses in violation of the laws of the State of Nebraska,
  - (b) designed or intended for use or which is or has been used as the means of committing a criminal offense,
  - (c) possessed, controlled, designed, or intended for use or which is or has been possessed, controlled, designed, or used in violation of any law of the State of Nebraska making such possession, control, design, or use, or intent to use, a criminal offense, or
  - (d) which constitutes evidence that a criminal offense has been committed or that a particular person has committed a criminal offense.
- (2) Notwithstanding subsection (1) of this section, no warrant shall be issued to search any place or seize anything in the possession, custody, or control of any person engaged in procuring, gathering, writing, editing, or disseminating news or other information for distribution to the public through a medium of communication unless probable cause is shown that such person has committed or is committing a

criminal offense. For purposes of this subsection, the terms person, information, and medium of communication shall be defined as provided in section 20-145.

**Source:** Laws 1963, c. 161, § 2, p. 571; Laws 1979, LB 107, § 1.

**29-814.01. Search warrant; issuance on affidavit; procedure.** A search warrant may be issued under section 29-814.04 pursuant to written affidavit sworn to before a magistrate or judge by the person making it. Such affidavit shall particularly describe the persons or places to be searched and the persons or property to be seized. Such affidavit shall set forth the facts and circumstances tending to show that such person or property is in the place, or the property is in the possession of the person, to be searched.

**Source:** Laws 1980, LB 731, § 1.

**29-814.02. Search warrant; issuance on oral statement; procedure.** In lieu of, or in addition to, written affidavit, a search warrant may be issued under section 29-814.04 pursuant to an oral statement given in person and under oath to a magistrate or judge. The oral statement shall be taken by means of a voice recording device in the custody of the magistrate or judge. If no voice recording device is available, the statement may be taken stenographically. The magistrate or judge shall direct that the recorded or stenographic statement be transcribed and the magistrate or judge shall certify the accuracy of the transcription. The magistrate or judge shall file with the clerk of the district court of the county in which the property was seized the original of the record and the transcribed statement. Such filing shall be made at the same time the warrant, copy of the return, inventory, and all other papers connected with the warrant are filed pursuant to section 29-816. For purposes of sections 29-814.01 to 29-814.06, an oral statement authorized by this section shall be considered to be an affidavit.

**Source:** Laws 1980, LB 731, § 2.

**29-814.03. Search warrant; issuance on telephonic statement; procedure.** A search warrant may be issued under section 29-814.05 pursuant to a telephonic statement made to a magistrate or judge in accordance with the procedures set forth in this section. Prior to telephonically contacting a magistrate or judge, the law enforcement officer requesting the warrant shall contact the county attorney or a deputy county attorney of the county in which the warrant is to be issued for purposes of explaining the reasons why a search warrant should be issued pursuant to a telephonic statement. If the county attorney or deputy county attorney is satisfied that a warrant is justified, and that circumstances justify its immediate issuance, the county attorney or deputy county attorney shall contact the magistrate or judge and state that he or she is convinced that a warrant should be issued by telephone. The county attorney or deputy county attorney shall provide the magistrate or judge with a telephone number at which the officer requesting the warrant may be contacted. The magistrate or judge shall call the officer at the number provided and shall place the officer under oath and take his or her statement. The statement shall be taken by means of a voice recording device in the custody of the magistrate or judge. The magistrate or judge shall direct that the recorded statement be transcribed and the magistrate or judge shall certify the accuracy of the transcription. The magistrate or judge shall file with the clerk of the district court of the county in which the property was seized the original of the recording and the transcribed statement. Such filing shall be made at the same time the warrant, copy of the return, inventory, and all other papers connected with the warrant are filed pursuant to section 29-816. For purposes of sections 29-814.01 to 29-814.06, a telephonic statement authorized by this section shall be considered to be an affidavit.

**Source:** Laws 1980, LB 731, § 3.

**29-814.04. Search warrant; issuance on written affidavit or oral statement; contents; restriction.** If the magistrate or judge is satisfied that probable cause exists for the issuance of a search warrant, as a result of written affidavit or oral statement authorized pursuant to sections 29-814.01 and 29-814.02, the magistrate or judge shall issue the warrant which shall identify the person or place to be searched and the person or property to be seized. The warrant shall be directed to a law enforcement officer of the State of Nebraska or one of its governmental subdivisions, which officer shall be specifically named or described by the title of his or her office in the warrant. The warrant shall state whether the grounds or proper cause of its issuance is a written affidavit, an oral statement, or a combination of both. The warrant shall indicate the name or names of the person or persons whose affidavit or statement has been taken in support thereof. The warrant shall command the officer named in the warrant to search the person or place named for the purpose specified. The warrant shall direct that it be served in the daytime unless the magistrate or judge is satisfied that the public interest requires that it should not be so restricted, in which case the warrant may direct that it may be served at any time. The warrant shall designate the magistrate or judge to whom it shall be returned. For purposes of this section, daytime shall mean the hours from 7:00 a.m. to 8:00 p.m. according to local time.

**Source:** Laws 1980, LB 731, § 4; Laws 1989, LB 267, § 1. Effective date August 25, 1989.

**29-814.05. Search warrant; issuance on telephonic statement; duplicate original; contents; procedure.**

- (1) If the magistrate or judge is satisfied that probable cause exists for the issuance of a search warrant, as the result of a telephonic statement taken under section 29-814.03, and if the magistrate or judge is further satisfied that sufficient reason exists to issue such warrant by telephone, the magistrate or judge shall authorize the officer requesting the warrant to complete a duplicate original warrant which shall contain a description of the person or place to be searched, a description of the person or property to be seized, a command to the officer to conduct the search for the purposes specified, the date and time of issuance, a statement that the grounds or proper cause for its issuance is by telephonic statement, the name or names of the person or persons whose statement has been taken in support of the warrant, and the name of the judge to whom it is to be returned. The magistrate or judge shall authorize the officer to sign his or her name to the duplicate original warrant and to also sign the name of the officer thereto. A duplicate original warrant shall be deemed to be a search warrant for purposes of Chapter 29, article 8.
- (2) At the time the magistrate or judge authorizes the officer to complete the duplicate original warrant under subsection (1) of this section, the magistrate or judge shall immediately complete and sign the original warrant which shall contain the information which is required for a duplicate original warrant under subsection (1) of this section. The magistrate or judge shall also enter on the face of the original warrant the exact time when the warrant was ordered to be issued.
- (3) The duplicate original warrant shall be returned according to section 29-815. Upon the duplicate original warrant being returned, the magistrate or judge shall sign it and shall file it, together with the original warrant, in the same manner as that required under section 29-816.
- (4) A search warrant issued pursuant to a telephonic statement shall be invalid unless the duplicate original warrant is signed by the issuing magistrate or judge pursuant to subsection (3) of this section.
- (5) A search warrant issued under this section may be executed immediately upon issuance.

**Source:** Laws 1980, LB 731, § 5.

**29-814.06. Original statement; lost, destroyed, or unintelligible; effect.** If the original of the oral or telephonic statement, taken pursuant to section 29-814.02 or 29-814.03, shall be lost, destroyed, or a critical portion thereof is unintelligible, a search warrant issued pursuant to such oral or telephonic statement shall be deemed to be invalid.

**Source:** Laws 1980, LB 731, § 6.

**29-815. Search warrant; executed and returned; inventory required.** The warrant must be executed and returned within ten days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property or shall leave the copy and the receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken if they are present, or in the presence of at least one credible witness other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge or magistrate shall deliver a copy of the inventory upon request to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

**Source:** Laws 1963, c. 161, § 4, p. 572.

**29-816. Search warrant; return; inventory; filing; received in evidence; when.** The judge or magistrate who has issued the search warrant shall attach to the warrant a copy of the return, inventory, and all other papers in connection therewith and shall file them with the clerk of the district court for the county in which the property was seized. Copy of such warrant, return, inventory, and all other such papers so filed with such clerk, when certified as a true copy by such clerk shall be received in evidence in all proceedings where relevant without further foundation. The clerk of the district court shall file and index such warrant, together with the return thereon, the inventory, and other papers in connection therewith as a separate criminal proceeding. No fee shall be charged or collected for such service.

**Source:** Laws 1963, c. 161, § 5, p. 572.

**29-817. Sections, how construed; property, defined; search warrant; confidential issuance; violation; penalty.** Sections 29-812 to 29-821 do not modify any act inconsistent with it relating to search warrants, their issuance, and the execution of search warrants and acts relating to disposition of seized property in circumstances

for which special provision is made. The term property is used in sections 29-812 to 29-821 to include documents, books, papers, and any other tangible objects. Nothing in sections 29-812 to 29-821 shall be construed as restricting or in any way affecting the constitutional right of any officer to make reasonable searches and seizures as an incident to a lawful arrest nor to restrict or in any way affect reasonable searches and seizures authorized or consented to by the person being searched or in charge of the premises being searched, or in any other manner or way authorized or permitted to be made under the Constitution of the United States and the Constitution of the State of Nebraska.

All search warrants shall be issued with all practicable secrecy and the complaint, affidavit, or testimony upon which it is based shall not be filed with the clerk of the court or made public in any way until the warrant is executed. Whoever discloses, prior to its execution, that a warrant has been applied for or issued, except so far as may be necessary to its execution, shall be guilty of a Class III misdemeanor, or he may be punished as for a criminal contempt of court.

**Source:** Laws 1963, c. 161, § 6, p. 572; Laws 1977, LB 40, § 113.

**29-818. Seized property; custody.** Property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same unless otherwise directed by the judge or magistrate, and shall be so kept so long as necessary for the purpose of being produced as evidence on any trial. Property seized may not be taken from the officer having it in custody by replevin or other writ so long as it is or may be required as evidence in any trial, nor may it be so taken in any event where a complaint has been filed in connection with which the property was or may be used as evidence, and the court in which such complaint was filed shall have exclusive jurisdiction for disposition of the property or funds and to determine rights therein, including questions respecting the title, possession, control, and disposition thereof.

**Source:** Laws 1963, c. 161, § 7, p. 573.

**29-819. Seized property; transfer to another jurisdiction; when.** Where seized property is no longer required as evidence in the prosecution of any complaint or information the court which has jurisdiction of such property may transfer the same to the jurisdiction of any other court, including courts of another state or federal courts, where it is shown to the satisfaction of the court that such property is required as evidence in any prosecution in such other court.

**Source:** Laws 1963, c. 161, § 8, p. 574.

**29-820. Seized property; disposition.**

- (1) Unless other disposition is specifically provided by law, when property seized or held is no longer required as evidence, it shall be disposed of by the law enforcement agency on such showing as the law enforcement agency may deem adequate, as follows:
  - (a) Property stolen, embezzled, obtained by false pretenses, or otherwise obtained unlawfully from the rightful owner thereof shall be restored to the owner;
  - (b) Money shall be restored to the owner unless it was used in unlawful gambling or lotteries or it was used or intended to be used to facilitate a violation of Chapter 28, article 4, in which case the money shall be forfeited and disposed of as required by Article VII, section 7, of the Constitution of Nebraska;
  - (c) Property which is unclaimed or the ownership of which is unknown shall be sold at a public auction held by the officer having custody thereof and the net proceeds disposed of as provided in subdivision (b) of this subsection, as shall any money which is unclaimed or the ownership of which is unknown;
  - (d) Except as provided in subdivision (2)(b) of this section, articles of contraband shall be destroyed; and
  - (e) Except as provided in subdivision (2)(a) of this section, firearms, ammunition, explosives, bombs, and like devices which have been used in the commission of crime shall be destroyed.
- (2) When the following property is seized or held and is no longer required as evidence, such property shall be disposed of on order of the court as the court may deem adequate:
  - (a) Firearms which may have a lawful use; and
  - (b) Goods which are declared to be contraband but may reasonably be returned to a condition or state in which such goods may be lawfully used, possessed, or distributed by the public.
- (3) When any animal as defined by section 28-1008 is seized or held and is no longer required as evidence, such animal may be disposed of in such manner as the court may direct. The court may consider adoption alternatives through humane societies or comparable institutions and the protection of such animal's

welfare. For a humane society or comparable institution to be considered as an adoption alternative under this subsection, it must first be licensed by the Department of Agriculture as having passed the inspection requirements in the Commercial Dog and Cat Operator Inspection Act and paid the fee for inspection under the act. The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year.

- (4) Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion shall direct.

**Source:** Laws 1963, c. 161, § 9, p. 574; Laws 1986, LB 543, § 1; Laws 2002, LB 82, § 12. Effective date July 20, 2002.

**29-821. Sections; supplemental to other laws.** The provisions of sections 29-812 to 29-821 relating to the disposition of seized property shall not be exclusive, but shall be supplemental to other laws on the subject.

**Source:** Laws 1963, c. 161, § 10, p. 575.

**29-822. Motion to suppress; filing; time; failure to file; effect; exception.** Any person aggrieved by an unlawful search and seizure may move for return of the property so seized and to suppress its use as evidence. The motion shall be filed in the district court where a felony is charged and may be made at any time after the information or indictment is filed, and must be filed at least ten days before trial or at the time of arraignment, whichever is the later, unless otherwise permitted by the court for good cause shown. Where the charge is other than a felony, the motion shall be filed in the court where the complaint is pending, and must be filed at least ten days before trial or at the time of the plea to the complaint, whichever is the later, unless otherwise permitted by the court for good cause shown. Unless claims of unlawful search and seizure are raised by motion before trial as herein provided, all objections to use of the property as evidence on the ground that it was obtained by an unlawful search and seizure shall be deemed waived; PROVIDED, that the court may entertain such motions to suppress after the commencement of trial where the defendant is surprised by the possession of such evidence by the state, and also may in its discretion then entertain the motion where the defendant was not aware of the grounds for the motion before commencement of the trial. In the event that the trial court entertains any such motion after the commencement of trial, the defendant shall be deemed to have waived any jeopardy which may have attached.

**Source:** Laws 1963, c. 155, § 1, p. 553.

**29-823. Motion to suppress; issues of fact; trial.** Issues of fact arising on motions to suppress shall be tried by the court without a jury, in a summary manner, on affidavits or otherwise, as the court may direct. No evidence shall be suppressed because of technical irregularities not affecting the substantial rights of the accused.

**Source:** Laws 1963, c. 155, § 2, p. 553.

**29-824. Search and seizure; motion to suppress; appeal; review after conviction.**

- (1) In addition to any other right to appeal, the state shall have the right to appeal from an order granting a motion for the return of seized property and to suppress evidence in the manner provided in sections 29-824 to 29-826.
- (2) If such motion has been granted in district court, the Attorney General or the county attorney or prosecuting attorney with the consent of the Attorney General may file his or her application with the Clerk of the Supreme Court asking for a summary review of the order granting the motion. The review shall be made by a judge of the Court of Appeals at chambers upon such notice, briefs, and argument as the judge directs, after which such judge shall enter his or her order affirming, reversing, or modifying the order submitted for review, and upon any trial on the general issue thereafter the parties and the trial court shall be bound by such order. Upon conviction after trial the defendant may on appeal challenge the correctness of the order by the judge.
- (3) If such motion has been granted in the county court, the Attorney General or the county attorney or prosecuting attorney may file his or her application with the clerk of the district court in the district in which the motion has been granted asking for a summary review of the order granting the motion. The review shall be made by a judge of the district court upon such notice, briefs, and arguments as the judge directs, after which such judge shall enter his or her order affirming, reversing, or modifying the order submitted for review, and upon any trial on the general issue thereafter the parties and the trial court shall be bound by such order. Upon conviction after trial the defendant may on appeal challenge the correctness of the order by the judge.

**Source:** Laws 1963, c. 155, § 3, p. 554; Laws 1981, LB 411, § 6; Laws 1991, LB 732, § 73; Laws 1998, LB 218, § 13.

**29-825. Motion to suppress; appeal; application.** The application for review provided in section 29-824 shall be accompanied by a copy of the order of the trial court granting the motion to suppress and a bill of exceptions containing all of the evidence, including affidavits, considered by the trial court in its ruling on the motion, and so certified by the trial court. The application shall be filed with the Clerk of the Supreme Court, if the trial court is the district court, or with the clerk of the district court, if the trial court is the county court, within such time as may be ordered by the trial court, which in fixing such time shall take into consideration the length of time required to prepare the bill of exceptions, and shall also consider whether the defendant is in jail or whether he or she is on bail, but in no event shall more than thirty days be given in which to file such application.

**Source:** Laws 1963, c. 155, § 4, p. 554; Laws 1998, LB 218, § 14; Laws 2000, LB 921, § 31. Effective date July 13, 2000.

**29-826. Motion to suppress; appeal; time limit; order for custody.** In making an order granting a motion to suppress and to return property, the trial court shall in such order fix a time, not exceeding ten days, in which the county attorney or other prosecuting attorney may file a notice with the clerk of such court of his or her intention to seek a review of the order. Upon the filing of such notice the trial court shall fix the time in which the application for review shall be filed with the appellate court, and shall make an appropriate order for custody of the property pending completion of the review.

**Source:** Laws 1963, c. 155, § 5, p. 554; Laws 1998, LB 218, § 15.

**29-827.** Repealed. Laws 1998, LB 218, s. 29.

**29-828. Search for weapons; when authorized.** Where the circumstances reasonably indicate to an officer of the law that a search of an individual for weapons is indicated in order to protect the life of such officer such search for weapons may lawfully be made.

**Source:** Laws 1963, c. 156, § 1, p. 556.

**29-829. Search of person for dangerous weapon; when authorized.** A peace officer may stop any person in a public place whom he reasonably suspects of committing, who has committed, or who is about to commit a crime and may demand of him his name, address and an explanation of his actions. When a peace officer has stopped a person for questioning pursuant to this section and reasonably suspects he is in danger of life or limb, he may search such person for a dangerous weapon. If the peace officer finds such a weapon or any other thing the possession of which may constitute a crime, he may take and keep it until the completion of questioning, at which time he shall either return it, if lawfully possessed, or arrest such person. For purposes of this section, peace officer shall include credentialed conservation officers of the Game and Parks Commission.

**Source:** Laws 1965, c. 132, § 1, p. 471.



## Inspection Warrants

**29-830. Inspection warrant, defined.** An inspection warrant is an order in writing in the name of the people, signed by a judge of a court of record, directed to a peace officer as defined in section 29-831, and commanding him to conduct any inspection required or authorized by state or local law or regulation relating to health, welfare, fire or safety.

**Source:** Laws 1969, c. 231, § 1, p. 858.

**29-831. Terms, defined.** As used in sections 29-830 to 29-835, unless the context otherwise requires: All state, county, city and village officers and their agents and employees, charged by statute or municipal ordinance with powers or duties involving inspection of real or personal property, building premises and contents, including but not limited by enumeration to housing, electrical, plumbing, heating, gas, fire, health, food, zoning, pollution, water, and weights and measures inspections, shall be peace officers for the purpose of applying for, obtaining and executing inspection warrants.

**Source:** Laws 1969, c. 231, § 2, p. 859.

**29-832. Inspection warrant; when used.** Inspection warrants shall be issued only upon showing that consent to entry for inspection purposes has been refused. In emergency situations neither consent nor a warrant shall be required.

**Source:** Laws 1969, c. 231, § 3, p. 859.

**29-833. Inspection warrant; issuance.** An inspection warrant shall be issued only by a judge of a court of record upon reasonable cause, supported by affidavit describing the place and purpose of inspection. The judge may examine the applicant and other witnesses, on oath, to determine sufficient cause for inspection.

**Source:** Laws 1969, c. 231, § 4, p. 859.

**29-834. Inspection warrants; laws applicable.** All general laws pertaining to search warrants, including but not limited to the filing costs involved and the conditions and time for return, shall be applicable to inspection warrants, unless in conflict with sections 29-830 to 29-833.

**Source:** laws 1969, c. 231, § 5, p. 859.

**29-835. Violations; penalty.** Any person who willfully refuses to permit, interferes with, or prevents any inspection authorized by inspection warrant shall be guilty of a Class III misdemeanor.

**Source:** Laws 1969, c. 231, § 6, p. 859; Laws 1977, LB 40, § 114.

## Fire Protection Districts and Fire Departments

**31-763. Annexation of territory by a city or village.** Whenever any city or village annexes all the territory within the boundaries of any sanitary and improvement district organized under the provisions of sections 31-701 to 31-726, or under sections 31-727 to 31-762, or any road improvement district organized under sections 39-1601 to 39-1636, or any fire protection district authorized under Chapter 35, article 5, the district shall merge with the city or village and the city or village shall succeed to all the property and property rights of every kind, contracts, obligations and chooses in action of every kind, held by or belonging to the district, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. All taxes, assessments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city or village. Any special assessments which the district was authorized to levy, assess, relevel or reassess, but which were not levied, assessed, relevelled or reassessed, at the time of the merger, for improvements made by it or in the process of construction or contracted for may be levied, assessed, relevelled or reassessed by the annexing city or village to the same extent as the district may have levied or assessed but for the merger; PROVIDED, nothing herein contained shall authorize the annexing city or village to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but such city or village shall be bound by all such findings or orders and assessments to the same extent as the district would be bound; AND PROVIDED FURTHER, that no district so annexed shall have power to levy any special assessments after the effective date of such annexation.

**Source:** Laws 1959, c. 130, § 1, p. 467; Laws 1969, c. 255, § 1, p. 925.

**31-764. Annexation; accounting; special assessments prohibited.** The trustees of a road improvement district or fire protection district or the trustees or administrator of a sanitary and improvement district shall within thirty days of the effective date of the merger submit to the city a written accounting of all assets and liabilities, contingent or fixed, of the district. Unless the city or village within six months thereafter brings an action against the trustees or administrator of the district for an accounting or for damages for breach of duty, the trustees or administrator shall be discharged of all further duties and liabilities and their bonds exonerated. If the city or village brings such an action and does not recover judgment in its favor, the taxable costs may include reasonable expenses incurred by the trustees of a road improvement district or fire protection district or the trustees or administrator of a sanitary and improvement district in connection with such suit and a reasonable attorney's fee for the trustees' or administrator's attorney. The city or village shall represent the district and all parties who might be interested in such an action. The city or village and such trustees or administrator shall be the only necessary parties to such action; PROVIDED, nothing contained in this section shall authorize the trustees or administrator to levy any special assessments after the effective date of the merger.

**Source:** Laws 1959, c. 130, § 2, p. 468; Laws 1969, c. 255, § 2, p. 926; Laws 1976, LB 313, § 9; Laws 1982, LB 868, § 26.

**31-765. Annexation; when effective; special assessments prohibited.** The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the district; PROVIDED, if the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The trustees of a road improvement district or fire protection district or the trustees or administrator of a sanitary and improvement district shall continue in possession and conduct the affairs of the district until the effective date of the merger, but shall not during such period levy any special assessments after the effective date of annexation.

**Source:** Laws 1959, c. 130, § 3, p. 468; Laws 1969, c. 255, § 3, p. 926; Laws 1982, LB 868, § 27.

**31-766. Annexation; obligations and assessments; agreement to divide; approval; special assessments prohibited.** If only a part of the territory within any sanitary and improvement district, any road improvement district, or any fire protection district is annexed by a city or village, the road improvement district or fire protection district acting through its trustees or the sanitary and improvement district acting through its trustees or administrator and the city or village acting through its governing body may agree between themselves as to the division of the assets, liabilities, maintenance, or other obligations of the district for a change in the boundaries of the district so as to exclude the portion annexed by the city or village or may agree upon a merger of the district with the city or village. The division of assets, liabilities, maintenance, or other obligations of the district shall be equitable, shall be proportionate to the valuation of the portion of the district annexed and to the valuation of the portion of the district remaining following annexation, and shall, to the greatest extent feasible, reflect the actual impact of the annexation on the ability of the district to perform its duties and responsibilities within its new

boundaries following annexation. In event a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections 31-763 to 31-766 when the city annexes the entire territory within the district, and the trustees or administrator shall be relieved of all further duties and liabilities and their bonds exonerated as provided in section 31-764. No agreement between the district and the city or village shall be effective until submitted to and approved by the district court of the county in which the major portion of the district is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the district or employee under contract to the district. The court may authorize or direct amendments to the agreement before approving the same. If the district and city or village do not agree upon the proper adjustment of all matters growing out of the annexation of a part of the territory located within the district, the district, the annexing city or village, any bondholder or creditor of the district, or any employee under contract to the district may apply to the district court of the county where the major portion of the district is located for an adjustment of all matters growing out of or in any way connected with the annexation of such territory, and after a hearing thereon the court may enter an order or decree fixing the rights, duties, and obligations of the parties. In every case such decree or order shall require a change of the district boundaries so as to exclude from the district that portion of the territory of the district which has been annexed. Such change of boundaries shall become effective on the date of entry of such decree. Only the district and the city or village shall be necessary parties to such an action. Any bondholder or creditor of the district or any employee under contract to the district whose interests may be adversely affected by the annexation may intervene in the action pursuant to section 25-328. The decree when entered shall be binding on the parties the same as though the parties had voluntarily agreed thereto. Nothing contained in this section shall authorize any district to levy any special assessments within the annexed area after the effective date of annexation.

**Source:** Laws 1959, c. 130, § 4, p. 469; Laws 1969, c. 255, § 4, p. 927; Laws 1982, LB 868, § 28; Laws 1994, LB 630, § 6. Operative date July 16, 1994.

**35-101. Volunteer firefighters; exemptions enumerated; retired firefighters; exemptions.** All volunteer members in good standing in any fire company or hook and ladder company in this state shall be exempt from militia duty in time of peace; PROVIDED, that said certificate of exemption shall be approved and authorized by the council or board of trustees under the seal of the city or village in which the fire department issuing the same is located. When any member shall have retired from such company after having served ten years or more he shall be furnished a certificate of exemption. Any member in good standing in any fire company or hook and ladder company in this state on September 20, 1957, shall be furnished a certificate of exemption after five years of service; PROVIDED, when a member serves in different fire companies or hook and ladder companies in this state, or at different times in the same company, he may add the years he previously served to his present membership in order to qualify for such exemption. Persons who received certificates of exemption for five years' service prior to September 20, 1957, shall be entitled to all exemptions theretofore enjoyed by holders of such certificates.

**Source:** Laws 1867(Ter.), § 1, p. 16; Laws 1871, § 1, p. 131; G.S.1873, c. 24, § 1, p. 390; R.S.1913, § 2496; Laws 1915, c. 44, § 1, p. 122; C.S.1922, § 2434; C.S.1929, § 35-101; R.S.1943, § 35-101; Laws 1955, c. 126, § 1, p. 359; Laws 1957, c. 135, § 1, p. 452; Laws 1959, c. 143, § 2, p. 553; Laws 1961, c. 166, § 1, p. 496; Laws 1963, c. 194, § 1, p. 639; Laws 1971, LB 14, § 1; Laws 1972, LB 1032, § 226; Laws 1973, LB 99, § 1.

**35-102. Volunteer fire department; number of members; copy of roll; filing.** No volunteer fire department shall have upon its rolls at one time more than twenty-five persons, for each engine and hose company in said fire department, and no hook and ladder company shall have upon its rolls at any one time more than twenty-five members. The foreman and secretary of every such company shall, on the first day of April and October in each year, file in the office of the clerk of the district court in and for the respective counties a certified copy of the rolls of their respective companies so as to obtain for the members thereof the privilege of the exemption mentioned in section 35-101. No organization shall be deemed to be a bona fide fire, or hook and ladder company until it shall have procured for active service apparatus for the extinguishment or prevention of fires, in case of a hose company, to the value of seven hundred dollars, and of a hook and ladder company to the value of five hundred dollars.

**Source:** Laws 1867 (Ter.), § 2, p. 16; G.S.1873, c. 24, § 2, p. 390; R.S.1913, § 2497; Laws 1915, c. 44, § 1, p. 122; C.S.1922, § 2435; C.S.1929, § 35-102.

**35-103. Volunteer firefighters; members in good standing.** Members in good standing are hereby defined to be those who keep their dues promptly paid up, and are present and render active service when called out for the

legitimate purposes of their organization.

**Source:** Laws 1867 (Ter.), § 3, p. 16; G.S.1873, c. 24, § 3, p. 390; R.S.1913, § 2498; C.S.1922, § 2436; C.S.1929, § 35-103.

**35-105. Equipment; exemption from execution and sale.** All fire engines, hose, hose carriages, ladders, buckets, and all vehicles, machinery, and appliances of every kind used or kept by incorporated cities, villages, or fire companies for the purpose of extinguishing fires are hereby exempt from execution and sale to satisfy any debt, judgment, or decree arising upon contract or otherwise. The provisions of this section shall not affect any voluntary lien created by bill of sale, security agreement as defined in article 9, Uniform Commercial Code, or otherwise, on such property, by the proper owner.

**Source:** Laws 1869, § 1, p. 17; R.S.1913, § 2499; C.S.1922, § 2438; C.S.1929, § 35-105; R.S.1943, § 35-105; Laws 1972, LB 1055, § 1; Laws 1999, LB 550, § 5. Operative date July 1, 2001.

**35-106. Fire insurance companies; occupation tax; levy; collection.** The municipal authorities of any city of the first or second class or village, shall have authority, by ordinance, to impose an occupation tax of not more than five dollars per annum on each fire insurance corporation, company or association, doing business in such city or village, for the use, support, and benefit of volunteer fire departments, regularly organized under the laws of the State of Nebraska regulating the same. The municipal clerk shall collect with diligence the occupation tax so imposed. Upon the receipt of said tax the municipal clerk shall pay over the proceeds thereof to the municipal treasurer who shall credit the same to a fund to be known as special occupation tax fund for benefit of the volunteer fire department. Upon proper claim filed by the chief of the fire department and allowed by the local governing body of the municipality, the municipal treasurer shall pay over the proceeds of the tax in the fund from time to time for the use of the fire department, as hereinbefore provided.

**Source:** Laws 1895, c. 38, § 1, p. 167; R.S.1913, § 2525; C.S.1922, § 2448; C.S.1929, § 35-401; Laws 1939, c. 37, § 1, p. 190; C.S. Supp.,1941, § 35-401.

**35-107. Volunteer department; emergency first aid; immunity from liability; when.** No member of a volunteer fire department or of a volunteer first-aid, rescue, or emergency squad which provides emergency public first-aid and rescue services shall be liable in any civil action to responding damages as a result of his acts of commission or omission arising out of and in the course of his rendering in good faith any such services as such member but such immunity from liability shall not extend to the operation of any motor vehicle in connection with such services.

Nothing in this section shall be deemed to grant any such immunity to any person causing damage by his willful or wanton act of commission or omission.

**Source:** Laws 1963, c. 192, § 1, p. 638.

**35-108. Volunteer fire and rescue personnel; group life insurance; municipality or district; purchase; maintain; coverage termination.** The governing body of any incorporated municipality having a volunteer fire department or the board of directors of each rural or suburban fire protection district shall purchase and maintain in force a policy of group term life insurance to age sixty-five covering the lives of all of its active volunteer fire and rescue personnel, except that when any such person serves more than one municipality or district such policy shall be purchased only by the first municipality or district which he or she serves. Such policy shall provide a minimum death benefit of ten thousand dollars for death from any cause and shall, at the option of the insured, be convertible to a permanent form of life insurance at age sixty-five. The coverage of such policy shall terminate as to any individual who ceases to be an active volunteer member of the fire department of the municipality or district.

**Source:** Laws 1971, LB 750, § 1; Laws 1973, LB 249, § 1; Laws 2003, LB 167, § 1. Operative date October 1, 2003.

**35-109. Sirens; restriction on use.** No siren or other similar device whose primary purpose is to warn the public of a natural or manmade emergency or disaster shall be used to notify volunteer firefighters of a fire or to summon volunteer firefighters to a fire. This section applies only to cities of the first class located within a county which contains a city of the metropolitan class.

**Source:** Laws 1997, LB 589, § 3.

**35-302. Paid fire departments; firefighters; hours of duty; alternating day schedule.** Firefighters employed in the fire departments of cities having paid fire departments shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of sixty hours per week. Each single duty shift shall consist of twenty-four consecutive hours and shall be followed by an off-duty period as necessary to assure

compliance with the requirements of this section unless by voluntary agreement between the city and the firefighter, any firefighter may be permitted to work an additional period of consecutive time and may return to work after less than a twenty-four-hour off-duty period. Any firefighter may be assigned to work less than a twenty-four-hour shift, but in such event the firefighter shall not work in excess of forty hours per week. No firefighter shall be required to perform any work or service as such firefighter during any period in which he or she is off duty except in cases of extraordinary conflagration or emergencies or job-related court appearances.

**Source:** Laws 1953, c. 119, § 1(2), p. 377; Laws 1963, c. 196, § 1, p. 642; Laws 1971, LB 773, § 1; Laws 1979, LB 80, § 101.

**35-501. Rural and suburban fire protection districts; organization; necessity.** It is recognized, found, and declared:

- (1) That it is in the public interest to encourage residents and property owners in rural and suburban areas in the state to organize, equip, and maintain local firefighting bodies corporate and politic for the purpose of providing the same type of protection of their lives and property against loss or destruction by fire as is available to residents of incorporated cities and villages; and
- (2) that the organization and establishment of adequately equipped and maintained local bodies corporate and politic for such purposes will promote the public health, convenience, safety, and welfare through the preservation and protection of lives and resources in rural and suburban areas in the state.

**Source:** Laws 1949, c. 98, § 1, p. 262; Laws 1955, c. 128, § 1, p. 363.

**35-502. District; organization; conversion from rural to suburban fire protection district; conditions.**

- (1) In order to provide for the protection of lives and property in rural and suburban areas against loss or damage by fire, more than fifty percent of the registered voters residing in the following are hereby authorized and empowered to initiate the formation of rural or suburban fire protection districts under the conditions specified in this section:
  - (a)
    - (i) Any territory in the State of Nebraska equivalent in area to one township or more which is situated outside the corporate limits of any city or village; or
    - (ii) Any area of less than one township which is surrounded by rural or suburban fire protection districts; or
  - (b) Any area situated in the State of Nebraska outside the corporate limits of any city or village in which there are at least two hundred homes and which has a taxable valuation of at least two million eight hundred sixty thousand dollars.
- (2) Such districts shall be organized in the manner provided by sections 35-501 to 35-517. If the district is organized in an area set forth in subdivision (1)(a) of this section, it shall be a rural fire protection district and references in such sections to rural fire protection districts shall refer to such a district. If the district is organized in an area set forth in subdivision (1)(b) of this section, it shall be a suburban fire protection district and references in such sections to a suburban fire protection district shall refer to such a district. Unless the context indicates otherwise, district, when used in such sections, shall refer to either a rural or suburban fire protection district, as the case may be.
- (3) Any rural fire protection district which has been duly organized under Chapter 35, which has within its boundaries at least two hundred homes, and which has a taxable valuation of at least two million eight hundred sixty thousand dollars is hereby authorized and empowered to convert to a suburban fire protection district in the manner provided by section 35-519.
- (4) Beginning July 1, 1998, no new rural or suburban fire protection district shall be formed except by merger or reorganization of two or more existing rural or suburban fire protection districts.

**Source:** Laws 1907, c. 52, § 2, p. 203; Laws 1909, c. 49, § 1, p. 244; R.S.1913, § 2138; Laws 1915, c. 33, § 1, p. 101; C.S.1922, § 2096; C.S.1929, § 32-1106; Laws 1939, c. 106, § 2, p. 471; C.S. Supp.,1941, § 32-1106; R.S.1943, § 32-1105; Laws 1951, c. 99, § 214, p. 353; Laws 1969, c. 257, § 29, p. 946; Laws 1979, LB 187, § 148; Laws 1990, LB 918, § 1; Laws 1992, LB 719A, § 129; Laws 1998, LB 1120, § 8. Operative date July 1, 1998.

**35-503.** Repealed. Laws 1998, LB 1120, s. 33.

**35-504.** Repealed. Laws 1998, LB 1120, s. 33.

**35-505.** Repealed. Laws 1998, LB 1120, s. 33.

**35-506. District; vote on organization; officers; terms; compensation.**

- (1) After formation of a district by merger or reorganization under section 35-517, at the time and place fixed by the county board for public hearing as provided in section 35-514, the registered voters who are residing within the boundaries of the district shall have the opportunity to decide by majority vote of those present whether the organization of the district shall be completed. Permanent organization shall be effected by the election of a board of directors consisting of five residents of the district. Such directors shall at the first regular meeting after their election select from the board a president, a vice president, and a secretary-treasurer who shall serve as the officers of the board of directors for one year. The board shall reorganize itself annually. The elected member of the board of directors receiving the highest number of votes in the election shall preside over the first regular meeting until the officers of such board have been selected. The three members receiving the highest number of votes shall serve for a term of four years and the other two members for a term of two years; and this provision shall apply to directors elected at the organizational meeting of the district.
- (2) The board shall reorganize itself annually. Election of directors of existing districts shall be held by the registered voters present at the regular annual meeting provided for in section 35-507 which is held in the calendar year during which the terms of directors are scheduled to expire. As the terms of these members expire, their successors shall be elected for four years and hold office until their successors have been elected. If the district contains more than one township, each township may be represented on the board of directors unless there are more than five townships within the district, and in such event there shall be only five directors on the board and no township shall have more than one member elected to such board of directors. In case of a vacancy on account of resignation, death, malfeasance, or nonfeasance of a member, the remaining members of the board shall fill the vacancy for the unexpired term. The person appointed to fill the vacancy shall be from the same area as the person whose office is vacated, if possible, otherwise from the district at large.
- (3) The members of the board of directors of a rural or suburban fire protection district may receive up to twenty-five dollars for each meeting of the board, but not to exceed twelve meetings in any calendar year, and reimbursement for any actual expenses necessarily incurred as a direct result of their responsibilities and duties as members of the board engaged upon the business of the district. When it is necessary for any member of the board of directors to travel on business of the district and to attend meetings of the district, he or she shall be allowed mileage at the rate provided in section 81-1176 for each mile actually and necessarily traveled.

**Source:** Laws 1939, c. 38, § 4, p. 193; C.S.Supp., 1941, § 35-604; R.S. 1943, § 35-404; Laws 1949, c. 98, § 6, p. 264; Laws 1967, c. 208, § 1, p. 567; Laws 1969, c. 283, § 1, p. 1051; Laws 1969, c. 257, § 36, p. 950; Laws 1981, LB 204, § 56; Laws 1995, LB 756, § 1; Laws 1998, LB 1120, § 9. Operative date July 1, 1998.

**35-507. District; meeting; when held.** A regular meeting of the registered voters who are residing within the boundaries of a district shall be held at the time of the budget hearing as provided by the Nebraska Budget Act, and special meetings may be called by the board of directors at any time. Notice of a meeting shall be given by the secretary-treasurer by one publication in a legal newspaper of general circulation in each county in which such district is situated. Notice of the place and time of a meeting shall be published at least five days prior to the date set for meeting.

**Source:** Laws 1949, c. 98, § 7, p. 265; Laws 1971, LB 713, § 1; Laws 1992, LB 1063, § 34; Laws 1992, Second Spec. Sess., LB 1, § 34; Laws 1998, LB 1120, § 10. Operative date July 1, 1998.

**35-508. District; directors; powers.** The board of directors shall have the following general powers:

- (1) To determine a general fire protection and rescue program for the district;
- (2) To make an annual estimate of the probable expense for carrying out such program;
- (3) To annually certify such estimate to the county clerk in the manner provided by section 35-509;
- (4) To manage and conduct the business affairs of the district;
- (5) To make and execute contracts in the name of and on behalf of the district;
- (6) To buy real estate when needed for the district and to sell real estate of the district when the district has no further use for it;
- (7) To purchase or lease such firefighting and rescue equipment, supplies, and other real or personal property as necessary and proper to carry out the general fire protection and rescue program of the district;
- (8) To incur indebtedness on behalf of the district;

- (9) To authorize the issuance of evidences of the indebtedness permitted under subdivision (8) of this section and to pledge any real or personal property owned or acquired by the district as security for the same;
- (10) To organize, establish, equip, maintain, and supervise a paid, volunteer, or combination paid and volunteer fire department or company to serve the district and to establish a service award benefit program pursuant to the Volunteer Emergency Responders Recruitment and Retention Act;
- (11) To employ and compensate such personnel as necessary to carry out the general fire protection and rescue program of the district;
- (12) To authorize the execution of a contract with the Game and Parks Commission or a public power district for fire protection of property of the commission or public power district located in or adjacent to the rural or suburban fire protection district;
- (13) To levy a tax not to exceed ten and one-half cents on each one hundred dollars in any one year upon the taxable value of all taxable property within such district subject to section 77-3443, in addition to the amount of tax which may be annually levied to defray the general and incidental expenses of such district, for the purpose of establishing a sinking fund for the construction, purchase, improvement, extension, original equipment, or repair, not including maintenance, of district buildings to house equipment or personal belongings of a fire department, for the purchase of firefighting and rescue equipment or apparatus, for the acquisition of any land incidental to such purposes, or for payment of principal and interest on any evidence of indebtedness issued pursuant to subdivisions (8) and (9) of this section. For purposes of section 77-3443, the county board of the county in which the greatest portion of the valuation of the district is located shall approve the levy;
- (14) To adopt and enforce fire codes and establish penalties at annual meetings, except that the code must be available prior to annual meetings and notice shall so provide; and
- (15) Generally to perform all acts necessary to fully carry out the purposes of sections 35-501 to 35-517.  
**Source:** Laws 1949, c. 98, § 8, p. 265; Laws 1953, c. 120, § 1, p. 378; Laws 1967, c. 209, § 1, p. 568; Laws 1967, c. 210, § 1, p. 570; Laws 1971, LB 583, § 2; Laws 1971, LB 691, § 1; Laws 1972, LB 849, § 2; Laws 1975, LB 375, § 1; Laws 1979, LB 187, § 149; Laws 1985, LB 308, 1; Laws 1986, LB 831, § 1; Laws 1990, LB 918, § 2; Laws 1992, LB 719A, § 130; Laws 1996, LB 1114, § 54; Laws 1998, LB 1120, § 11; Laws 1999, LB 849, § 31.

**35-509. District; budget; tax to support; limitation; how levied; county treasurer; secretary-treasurer; duties.**

- (1) The board of directors shall have the power and duty to determine a general fire protection and rescue policy for the district and shall annually fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary in carrying out such contemplated program for the ensuing fiscal year, including the amount of principal and interest upon the indebtedness of the district for the ensuing year. After the adoption of the budget statement, the president and secretary of the district shall request the amount of tax to be levied which the district requires for the adopted budget statement for the ensuing year to the proper county board on or before August 1 of each year. Such board shall levy a tax not to exceed ten and one-half cents on each one hundred dollars upon the taxable value of all the taxable property in such district when the district is a rural or suburban fire protection district, for the maintenance of the fire protection district for the fiscal year as provided by law, plus such levy as is authorized to be made under subdivision (13) of section 35-508, all such levies being subject to section 77-3443. The tax shall be collected as other taxes are collected in the county, deposited with the county treasurer, and placed to the credit of the rural or suburban fire protection district so authorizing the same to be paid to the secretary-treasurer of such district as is provided for by subsection (3) of this section or to be remitted to the county treasurer of the county in which the greatest portion of the valuation of the district is located as is provided for by subsection (2) of this section. For purposes of section 77-3443, the county board of the county in which the greatest portion of the valuation of the district is located shall approve the levy.
- (2) All such taxes collected or received for the district by the treasurer of any other county than the one in which the greatest portion of the valuation of the district is located shall be remitted to the treasurer of the county in which the greatest portion of the valuation of the district is located at least quarterly. All such taxes collected or received shall be placed to the credit of such district in the treasury of the county in which the greatest portion of the valuation of the district is located.
- (3) It shall be the duty of the secretary-treasurer of the district to apply for and receive from the county treasurer of the county in which collected or from the county treasurer of the county in which the greatest portion of the valuation of the district is located, if such district is located in more than one county, all money to the credit of the rural or suburban fire protection district or collected for the same by such county treasurer, upon an order of the treasurer countersigned by the president of such district. The money shall

be paid out upon warrants drawn upon the secretary-treasurer by authority of the board of directors of the district bearing the signature of the secretary-treasurer and the countersignature of the president of the rural or suburban fire protection district.

- (4) In no case shall the amount of tax levy exceed the amount of funds to be received from taxation according to the adopted budget statement of the district.

**Source:** Laws 1939, c. 38, § 5, p. 193; C.S. Supp., 1941, § 35-605; R.S. 1943, § 35-405; Laws 1947, c. 128, § 1, p. 368; Laws 1949, c. 98, § 9, p. 266; Laws 1953, c. 121, § 1, p. 383; Laws 1953, c. 287, § 54, p. 962; Laws 1955, c. 127, § 1, p. 360; Laws 1955, c. 128, § 4, p. 365; Laws 1969, c. 145, § 34, p. 693; Laws 1972, LB 849, § 3; Laws 1975, LB 375, § 2; Laws 1979, LB 187, § 150; Laws 1990, LB 918, § 3; Laws 1992, LB 719A, § 131; Laws 1996, LB 1114, § 55; Laws 1998, LB 1120, § 12. Operative date July 1, 1998.

**35-509.01. District; secretary-treasurer; bond; amount; premium; failure to furnish; effect.** The secretary-treasurer of each district shall, within ten days after his or her election, execute to the county and file with the county clerk a bond of not less than two thousand dollars in any instance nor less than the amount of money, as nearly as can be ascertained, to come into his or her hands as secretary-treasurer at any one time, with a surety company or companies of recognized responsibility as surety or sureties, to be approved by the president of such district, conditioned for the faithful discharge of the duties of his or her office. The premium on the bond shall be paid by the district. The bond when approved shall be filed in the office of the county clerk of the county in which the rural or suburban fire protection district is situated. If the district is located in two or more counties, such bond shall be filed in the office of the county clerk of the county in which the greatest portion of the valuation of the district is located. If the secretary-treasurer fails to execute such bond, his or her office shall be declared vacant by the board, and the board shall immediately appoint a secretary-treasurer, who shall be subject to the same conditions and possess the same powers as if elected to that office. The secretary-treasurer shall have no power or authority to withdraw or disburse the money of the district prior to his or her filing the bond required in this section.

**Source:** Laws 1953, c. 121, § 2, p. 384; Laws 1955, c. 128, § 5, p. 366; Laws 1998, LB 1120, § 13. Operative date July 1, 1998.

**35-511. District funds; where deposited; how disbursed; annual report.** All donations, contributions, bequests, annuities, or borrowed money received by or on behalf of the district shall be deposited with the secretary-treasurer of the district and shall be drawn out only upon proper check. Such check shall be authorized by the board of directors and shall bear the signature of the secretary-treasurer and the countersignature of the president of such district. The secretary-treasurer of the district shall, at each annual public meeting of the district, present a financial report concerning the affairs of the district.

**Source:** Laws 1939, c. 38, § 7, p. 193; C.S. Supp., 1941, § 35-607; R.S. 1943, § 35-407; Laws 1949, c. 98, § 11, p. 267; Laws 1993, LB 516, § 3; Laws 1998, LB 1120, § 14. Operative date July 1, 1998.

**35-512. Districts; warrants; amount authorized; rate of interest.** All warrants for payment of any indebtedness of a rural fire protection district which are unpaid for want of funds shall bear interest at a rate specified by the issuing district and endorsed on the warrant, from the date of the registering of such unpaid warrants with the county treasurer; PROVIDED, that the amount of such warrants does not exceed the revenue provided for the year in which the indebtedness was incurred.

**Source:** Laws 1939, c. 38, § 9, p. 194; C.S. Supp., 1941, § 35-609; R.S. 1943, § 35-409; Laws 1949, c. 98, § 12, p. 267; Laws 1969, c. 51, § 102, p. 336.

**35-513. Districts; consolidation; contracts for fire protection; cities and villages; power to contract; service award benefit program; authorized.**

- (1) Any rural or suburban fire protection district may elect to enter into a contract with another rural or suburban fire protection district to consolidate or cooperate for mutual fire protection and prevention purposes, or may enter into a contract with an incorporated city or village for fire protection service or fire protection cooperation, upon terms suitable to all concerned, and power to make such contracts is hereby conferred upon such city or village in addition to such other powers as have been heretofore provided by law.
- (2) A rural or suburban fire protection district may establish a service award benefit program pursuant to the Volunteer Emergency Responders Recruitment and Retention Act and may appropriate and expend funds for the cost of any such program for volunteer members of a volunteer department of a city of the first or second class or village or other rural or suburban fire protection district with which the district has a



contract for emergency response services.

**Source:** Laws 1939, c. 38, § 8, p. 194; C.S. Supp., 1941, § 35-608; R.S. 1943, § 35-408; Laws 1949, c. 98, § 13, p. 267; Laws 1955, c. 128, § 7, p. 367; Laws 1999, LB 849, § 32.

**35-513.01.** Repealed. Laws 1998, LB 1120, s. 33.

**35-513.02.** Repealed. Laws 1998, LB 1120, s. 33.

**35-513.03.** Repealed. Laws 1998, LB 1120, s. 33.

**35-513.04.** Repealed. Laws 1998, LB 1120, s. 33.

**35-513.05.** Repealed. Laws 1998, LB 1120, s. 33.

**35-514. District; annexation of territory; procedure.**

- (1) Any territory which is outside the limits of any incorporated city may be annexed to an adjacent district in the manner provided in this section, whether or not the territory is in an existing rural or suburban fire protection district.
- (2) The proceedings for the annexation may be initiated by either
  - (a) the presentation to the county clerk of a petition signed by sixty percent or more of the registered voters who are residing within the boundaries of the territory to be annexed stating the desires and purposes of such petitioners or
  - (b) the presentation to the county clerk of certified copies of resolutions passed by the board of directors of the annexing district and any other district from which the property would be annexed supporting the proposed annexation. The petition or resolutions shall contain a description of the boundaries of the territory proposed to be annexed. The petition or resolutions shall be accompanied by a map or plat and a deposit for publication costs.
- (3) The county clerk shall verify the petition as provided in section 32-631 and determine and certify whether or not such petition or resolution complies with the requirements of subsection (2) of this section and that the persons signing the petition appear to reside at the addresses indicated by such petition. Thereafter, the county clerk shall forward any petition, map or plat, and certificate to the board of directors of the districts concerned.
- (4) Within thirty days after receiving the petition, map or plat, and certificate of the county clerk, in accordance with subsection (3) of this section, from the county clerk, the board of directors of all affected districts shall transmit the same to the proper county board, accompanied by a report in writing approving or disapproving the proposal contained in the petition, or approving such proposal in part and disapproving it in part. If the annexation is proposed by resolutions of the affected districts, the resolutions shall be transmitted to the proper county board.
- (5) The county board shall promptly designate a time and place for a hearing upon the annexation. Notice of such hearing shall be given by publication two weeks in a newspaper of general circulation in the county, the last publication appearing at least seven days prior to the hearing. The notice shall be addressed to "all registered voters residing in the following boundaries" and shall include a description of the proposed boundaries as set forth in the petition or resolutions. At such hearing, any person shall have the opportunity to be heard respecting the proposed annexation.
- (6) The county board shall, within forty-five days after the hearing referred to in subsection (5) of this section, determine whether such territory should be annexed and shall fix the boundaries of the territory to be annexed. No annexation shall be approved which would leave any district with less than the minimum valuation of two million eight hundred sixty thousand dollars. The determination of the county board shall be set forth in a written order which shall describe the boundaries determined upon and shall be filed in the office of the county clerk.
- (7) Any area annexed from a rural or suburban fire protection district, except areas duly incorporated within the boundaries of a municipality, shall be subject to assessment and be otherwise chargeable for the payment and discharge of all the obligations of the rural or suburban fire protection district outstanding at the time of the filing of the petition or resolution for the annexation of the area as fully as though the area had not been annexed. All procedures which could be used to compel the annexed area, except for areas duly incorporated within the boundaries of a municipality, to pay its portion of the outstanding obligations had the annexation not occurred may be used to compel such payment. Areas duly incorporated within the

boundaries of a municipality shall be automatically annexed from the boundaries of the district notwithstanding the provisions of section 31-766 and shall not be subject to further tax levy or other charges by the district, except that before the annexation is complete, the municipality shall assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the area annexed or incorporated. An area annexed from a rural or suburban fire protection district shall not be subject to assessment or otherwise chargeable for any obligation of any nature or kind incurred by the district after the annexation of the area from the district.

**Source:** Laws 1949, c. 98, § 14, p. 268; Laws 1953, c. 120, § 2, p. 379; Laws 1955, c. 128, § 9, p. 368; Laws 1957, c. 136, § 1, p. 454; Laws 1981, LB 310, § 1; Laws 1998, LB 1120, § 15. Operative date July 1, 1998.

**35-514.01.** Repealed. Laws 1998, LB 1120, s. 33.

**35-514.02. Emergency medical or fire protection service; contract; agreement; notice; hearing; cost; levy; limitation.** A rural or suburban fire protection district may establish an emergency medical service, including the provision of scheduled or unscheduled ambulance service, or provide fire protection service either within or without the district, may enter into agreements under the Interlocal Cooperation Act and the Joint Public Agency Act for the purpose of establishing an emergency medical service or providing fire protection service, may contract with any city, person, firm, corporation, or other fire protection district to provide such services, may expend funds of the district, and may charge a reasonable fee to the user. Before any such services are established under the authority of this section, the rural or suburban fire protection district shall hold a public hearing after giving at least ten days' notice, which notice shall include a brief summary of the general plan for establishing the emergency medical service or providing fire protection service, including an estimate of the initial cost and the possible continuing cost of operating the emergency medical service or fire protection service. If the board after such hearing determines that an emergency medical service or fire protection service is needed, it may proceed as authorized in this section. The authority granted in this section shall be cumulative and supplementary to any existing powers heretofore granted. Any fire protection district providing any service under this section may pay the cost for the service out of available funds or may levy a tax for the purpose of supporting an emergency medical service or providing fire protection service, which levy shall be in addition to any other tax for such fire protection district and shall be subject to section 77-3443. When a fire protection district levies a tax for the purpose of supporting an emergency medical service, the taxpayers of such district shall be exempt from any tax levied under section 13-303. The board of a fire protection district which provides fire protection service outside of the district may charge a political subdivision with which the district has entered into an agreement for such service on a per-call basis for such service.

**Source:** Laws 1967, c. 205, § 2, p. 562; Laws 1978, LB 560, § 3; Laws 1988, LB 1159, § 1; Laws 1996, LB 1114, § 56; Laws 1997, LB 138, § 37; Laws 1999, LB 87, § 69; Laws 2001, LB 808, § 4.

**35-516. District; boundaries; change; procedure; merger.**

(1) The boundaries of any rural or suburban fire protection district organized under sections 35-501 to 35-517 may be changed in the manner prescribed by section 35-514, but the changes of boundaries of any such district shall not impair or affect its organization or its right in or to property; nor shall it impair, affect, or discharge any contract, obligation, lien, or charge for or upon which it might be liable had such change of boundaries not been made.

(2) Any two or more rural or suburban fire protection districts may be merged by petition or resolution in the manner prescribed for annexation by section 35-514, and the resulting district shall succeed to all rights and property and be subject to any contracts, obligations, liens, or charges of the districts so merged.

**Source:** Laws 1949, c. 98, § 16, p. 270; Laws 1955, c. 128, § 10, p. 369; Laws 1961, c. 167, § 2, p. 499; Laws 1963, c. 197, § 1, p. 644; Laws 1996, LB 1085, § 50; Laws 1998, LB 1120, § 16. Operative date July 1, 1998.

**35-517. District; boundaries; county board; duties.**

(1) By July 1, 1999, the county board shall set the boundaries of all rural or suburban fire protection districts in the county so that all areas within the county which are not within the incorporated areas of cities and villages are included within a rural or suburban fire protection district.

(2) By July 1 of the year following the dissolution of any rural or suburban fire protection district, the county board shall set the boundaries of all remaining rural and suburban fire protection districts so that all areas within the county which are not within the incorporated areas of cities and villages are included within a rural or suburban fire protection district.

- (3) Any county may set the boundaries of all rural and suburban fire protection districts for which the county is responsible for allocating levy authority under section 77-3443 so that the highest levy of a rural or suburban fire protection district is no more than two times the average levy of all rural and suburban fire protection districts for which the county is responsible for allocating levy authority under section 77-3443 based on the property tax request and associated valuation for the current fiscal year. For purposes of this subsection, each county shall examine the property tax request of each rural or suburban fire protection district in the county for all purposes except bonded indebtedness for the current fiscal year and lease-purchase contracts in existence on July 1, 1998, as compared to the valuation for the tax year against which the levy was imposed. If one or more fire protection districts do not meet the standard required by this subsection for the current year, boundaries may be relocated to place more valuation in the high levy districts and less in the low levy districts so that the standard is met. If any district is to be eliminated by the county to meet the standard, the property tax request for the current fiscal year will be assumed to be transferred to the other districts which are to be in the territory of the eliminated district in proportion to the valuation transferred to such districts for purposes of compliance with the standard, the district shall be deemed to be dissolved, and the obligations and assets of the district shall be disposed of as provided in section 35-521. For purposes of this subsection, the average levy of all rural and suburban fire protection districts means the total taxes levied by all rural and suburban fire protection districts for which the county is responsible for allocating levy authority divided by the total taxable valuation of all such districts.
- (4) Before May 1 of the year in which any change in boundaries allowed or required under this section is to be effective, the county board shall forthwith designate a time and place for a hearing before the county board of such county and shall give due notice thereof in the manner prescribed by section 35-514. The hearing shall be prior to June 1. At the time and place so fixed the county board shall meet and all persons interested shall have opportunity to be heard. Thereupon, the county board shall consider the general rural fire protection policy for the county as a whole and shall determine the boundaries of the district or districts, whether as existing prior to such determination or otherwise, and shall make a written order of such determination which shall be filed in the office of the county clerk by July 1 of the year in which any change in boundaries under this section is to be effective. If all rural and suburban fire protection districts for which the county is responsible for allocating levy authority under section 77-3443 agree to a change in boundaries and submit a proposal to change boundaries to the county board prior to the hearing, the county shall adopt the proposal unless it finds that the proposal is not consistent with the fire protection policy in the county as a whole or does not result in levies which comply with the standard described in this section. Thereafter, such reorganized district or districts shall be deemed to be organized and operating under sections 35-501 to 35-517. Nothing herein contained shall impair, affect, or discharge any previously existing contract, obligation, lien, or charge of the district or districts.
- Source:** Laws 1949, c. 98, § 17, p. 270; Laws 1995, LB 589, § 8; Laws 1996, LB 1085, § 51; Laws 1998, LB 1120, § 17. Operative date July 1, 1998.

**35-518. Districts; contract for protection with counties of adjoining state; terms; damages.**

Any rural or suburban fire protection district may enter into contracts on an annual or other basis with any rural fire protection district of an adjoining county or counties of another state having a general fire protection program or firefighting equipment under the control of the fire protection district for the fire protection services or fire protection cooperation. All such contracts shall be upon terms suitable to all concerned. The terms and conditions upon and in compliance with which each district is to cooperate in furnishing, maintaining, and operating fire equipment for outside aid, mutual aid, or making payment for such service shall be expressly stipulated. The secretary-treasurer of the fire protection district is authorized to pay over money to the treasurer or other proper officer of the fire protection district in an adjoining state authorized to receive the same in accordance with the terms of the contract and upon the order of the board of directors. Any fire protection district, department, company, or firefighters answering any fire alarm or performing fire prevention services or rescue, resuscitation, first-aid, inspection, or any other official work outside its state and within a rural or suburban fire protection district organized under the provisions of Chapter 35, article 5, shall be considered an agent of the rural or suburban fire protection district located in the State of Nebraska, and acting solely and alone in a governmental capacity, and such rural or suburban fire protection district located in another state shall not be liable in damages for any act of commission, omission, or negligence while answering or returning from any fire, or reported fire, or doing or performing any fire prevention work or rescue, resuscitation, first-aid, inspection, or other official work.

**Source:** Laws 1955, c. 128, § 13, p. 372; Laws 1979, LB 80, § 102.

**35-519. Rural fire protection district; conversion to suburban fire protection district; procedure; effect.**

- (1) Whenever it is desired and proposed to convert a duly organized rural fire protection district to a suburban fire protection district as authorized by section 35-502, such conversion may be accomplished in the manner provided in this section.
- (2) The board of directors of such district shall adopt by majority vote of all the directors thereof a resolution setting forth the proposal to convert such district to a suburban fire protection district. Such resolution shall then be submitted to the electors of the district for approval at a regular meeting or a special meeting thereof called for that purpose after due notice of such regular or special meeting and of the proposal for conversion has been given in the manner prescribed by section 35-507.
- (3) If such resolution for conversion is approved by a majority vote of the electors present and voting at such meeting, the secretary-treasurer of the district shall prepare a certified copy of the resolution, shall certify that the resolution was duly adopted by the board of directors of the district and approved by a majority vote of the electors thereof, and shall forward the approved resolution to the county clerk of the county within which the district is located or, if such district is located within two or more counties, to the county clerk of the county within which the greater area of the district is situated. The secretary-treasurer of the district shall also deposit with the county clerk a sum sufficient to defray the expense of publishing the notices required.
- (4) The county clerk shall then confer with the county clerk of any other county concerned and shall determine and certify that the district contains within its boundaries at least two hundred homes and has a taxable valuation of at least two million eight hundred sixty thousand dollars and shall thereafter designate a time and place for the proposal for conversion to be heard by the county board in which the district is located or, if the district is located within two or more counties, by a joint meeting of the county boards of the counties concerned. Notice of such hearing shall be given by publication two weeks in a newspaper of general circulation within each county in which the district is located, the last publication appearing at least seven days prior to the hearing.
- (5) At the time and place so fixed, the county board or boards shall meet and all persons residing in or owning taxable property within the district shall have an opportunity to be heard respecting the proposal for conversion. Thereupon, the county board or boards shall determine whether the proposed conversion is suited to the general fire protection policy of the county or each of such counties as a whole and shall make a written order of such determination which shall be filed in the office of the county clerk of each county in which such district is located. If the order and determination approves such conversion, the district shall thereafter cease to be a rural fire protection district and shall become a suburban fire protection district. The conversion of any such rural fire protection district to a suburban fire protection district shall not impair or affect its right in or to property and shall not impair, affect, or discharge any contract, obligation, lien, or charge for or upon which it might be liable had such conversion not been made.

**Source:** Laws 1959, c. 144, § 2, p. 555; Laws 1979, LB 187, § 153; Laws 1992, LB 719A, § 134.

**35-520. Rural fire protection district; false alarm; false report; violation; penalty.** Whoever willfully or maliciously shall raise a false alarm or false report of a fire in any rural fire protection district or any rural area within the State of Nebraska shall be guilty of a Class III misdemeanor.

**Source:** Laws 1963, c. 193, § 1, p. 638; Laws 1977, LB 40, § 170.

**35-521. Rural or suburban fire protection district; dissolution; petition; election; disbursement of funds.** A petition seeking the dissolution of a rural or suburban fire protection district, signed by the registered voters of the district equal in number to ten percent of the number of registered voters, may be filed with the board of directors. If the board finds that all indebtedness of the district can be satisfied from funds on hand or to be received from the then current levy, it shall submit the question of dissolution to the registered voters of the district at the next annual rural or suburban fire protection district election. If a majority of those voting on the question vote in favor of such dissolution, the board of directors shall declare the district dissolved and certify such action to the county boards of the counties in which the district is located. After satisfying the outstanding indebtedness of the district, the secretary-treasurer of the district shall transfer to the county treasurers of the counties in which the district is situated any remaining funds of the district in the same proportion as the area of the district in each county bears to the total area of the district, and such funds shall be deposited in the general fund of the respective counties.

**Source:** Laws 1967, c. 206, § 1, p. 563; Laws 1998, LB 1120, § 18. Operative date July 1, 1998.

**35-522. Rural or suburban fire protection district; inactive for five years; county board; dissolution.** When any rural or suburban fire protection district is inactive for a period of at least five years, as determined by

resolution of the county board in which the greatest portion of the valuation of the district is located, the county board may order the district dissolved. The county board shall file copies of such order of dissolution with the county clerks and county treasurers of all counties in which such district is located. Upon receipt of such order, the county treasurer shall dispose of any remaining funds of such district in the manner provided by section 35-521.

**Source:** Laws 1967, c. 206, § 2, p. 564; Laws 1998, LB 1120, § 19. Operative date July 1, 1998.

**35-523.** Repealed. Laws 1998, LB 1120, s. 33.

**35-524.** Repealed. Laws 1998, LB 1120, s. 33.

**35-525.** Repealed. Laws 1998, LB 1120, s. 33.

**35-526.** Repealed. Laws 1998, LB 1120, s. 33.

**35-527.** Repealed. Laws 1998, LB 1120, s. 33.

**35-528.** Repealed. Laws 1998, LB 1120, s. 33.

**35-529. Rural or suburban fire protection district; radio equipment; purchase; reimbursement.** The materiel administrator of the Department of Administrative Services is authorized to purchase radio equipment for any rural or suburban fire protection district when requested by the district. The district shall reimburse the state for the cost of any equipment so purchased for it.

**Source:** Laws 1969, c. 280, § 1, p. 1048; Laws 2000, LB 654, § 2. Operative date February 23, 2000.

**35-530. Territory within village or city; inclusion within district; procedure.** The territory within the incorporated area of any village or city may be included within a rural or suburban fire protection district pursuant to sections 35-530 to 35-536.

**Source:** Laws 1978, LB 907, § 1; Laws 1998, LB 1120, § 20. Operative date July 1, 1998.

**35-531. Inclusion; procedure.** The proceedings for the inclusion referred to in section 35-530 may be initiated by

- (1) the presentation to the county clerk of a petition signed by sixty percent or more of the registered voters who are residing within the boundaries of the territory to be included stating the desires and purposes of such petitioners or
- (2) adoption by a majority vote of a joint resolution or ordinance by the board of directors of the district and the city council or village board. The petition or joint resolution or ordinance shall contain a description of the boundaries of the territory proposed to be included and it shall be accompanied by a map or plat and a deposit for publications costs.

**Source:** Laws 1978, LB 907, § 2; Laws 1998, LB 1120, § 21. Operative date July 1, 1998.

**35-532. Inclusion; county clerk; duties.** The county clerk shall verify the petition as provided in section 32-631 and determine and certify whether or not such petition or joint resolution or ordinance complies with the requirements of section 35-531 and that the persons signing the petition appear to reside within the boundaries described by such petition. Thereafter, the county clerk shall forward such petition, map or plat, and certificate to the board of directors of the district and the village board or city council affected by such inclusion. If the inclusion proposed is by joint resolution or ordinance, the county clerk shall transmit the joint resolution or ordinance and map or plat to the county board for a hearing under section 35-533.

**Source:** Laws 1978, LB 907, § 3; Laws 1998, LB 1120, § 22. Operative date July 1, 1998.

**35-533. Inclusion; map or plat; certificate; report; transmitted to county board; duties; district in more than one county; hearing; boundaries; determination.**

- (1) Within thirty days after receiving the petition, map or plat, and certificate of the county clerk, in accordance with section 35-532, the board of directors of the district and the city council or village board shall transmit the petition, map or plat, and certificate to the proper county board, accompanied by a report in writing approving or disapproving the proposal contained in the petition, or approving such proposal in part and disapproving it in part.
- (2) Within thirty days after receiving the resolution or ordinance, map or plat, and certificate of the county clerk, the board of directors of the district and the city council or village board shall transmit the resolution

or ordinance, map or plat, and certificate to the proper county board.

- (3) If the proposed district will be situated within two or more counties, the county clerk of the county in which the largest number of petitioners have signed or, in the case of a joint resolution or ordinance, the county containing the greatest number of registered voters, shall confer with the clerk or clerks of the other county or counties concerned and shall obtain a certificate as to the adequacy of the petitions, resolutions, or ordinances pertaining to such county or counties, and thereafter he or she shall designate a time and place for a hearing before a joint meeting of the county boards of all counties in which the proposed district is to be situated. Notice of such hearing shall be given by publication two weeks in a newspaper of general circulation in the county, the last publication appearing at least seven days prior to the hearing. The notice shall be addressed to "all registered voters residing in the following boundaries" and shall include a description of the proposed boundaries as set forth in the petition, resolution, or ordinance. At the time and place so fixed, the county board or boards shall meet and all persons shall have an opportunity to be heard respecting the inclusion or the location of the boundaries of the district. Within forty-five days after such hearing, the county board or boards shall determine whether the proposed district is suited to the general fire protection policy of the county, or each of such counties, as a whole, determine the boundaries of the proposed district, and make a written order of such determination which shall describe the boundaries of the district and be filed in the office of the county clerk or clerks of each county in which such district is situated.

**Source:** Laws 1978, LB 907, § 4; Laws 1998, LB 1120, § 23. Operative date July 1, 1998.

**35-534.** Repealed. Laws 1998, LB 1120, s. 33.

**35-535. District; public meeting; board of directors.** After the filing of a written order by the county board pursuant to section 35-533, the county clerk shall then fix a time and place for a public meeting of all registered voters who are residing within the boundaries. A board of directors shall be elected as provided in section 35-506 and shall have the powers as provided in section 35-508.

**Source:** Laws 1978, LB 907, § 6; Laws 1998, LB 1120, § 24. Operative date July 1, 1998.

**35-536. Merged district; statutes applicable.** Each rural or suburban fire protection district merged pursuant to sections 35-530 to 35-536 shall be subject to the provisions of sections 35-508, 35-509, 35-511, and 35-512. Such merged district shall operate under the same tax levy limit as a rural or suburban fire protection district.

**Source:** Laws 1978, LB 907, § 7; Laws 1979, LB 187, § 259; Laws 1998, LB 1120, § 25. Operative date July 1, 1998.

**35-601. Emergency Firefighting Fund; created; use; investment.** There is hereby created the Emergency Firefighting Fund, to be used by the State Fire Marshal to assist in controlling and extinguishing wildland fires. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1965, c. 190, § 1, p. 581; Laws 1969, c. 286, § 1, p. 1055; Laws 1969, c. 584, § 37, p. 2366; Laws 1995, LB 7, § 31.

**35-602. Emergency Firefighting Fund; State Fire Marshal; use; purpose.** Whenever the State Fire Marshal finds that conditions of extreme fire hazard exist he may use the proceeds of the Emergency Firefighting Fund for the purpose of preventing, controlling, or extinguishing any fires that are a hazard to state and private lands within the state.

**Source:** Laws 1965, c. 190, § 2, p. 581; Laws 1969, c. 286, § 2, p. 1055.

**35-603. Emergency Firefighting Fund; agreements with federal government; purpose.** The State Fire Marshal may, for the purpose of maintaining a fire patrol in any timber, brush, grass, or other flammable vegetation or material, enter into cooperative agreements with the federal government under such terms as he deems advisable and may renew, revise and terminate such agreements. The expenses incurred under such agreements shall be paid from the Emergency Firefighting Fund or funds available for wild land fire protection.

**Source:** Laws 1965, c. 190, § 3, p. 581; Laws 1969, c. 286, § 3, p. 1055.

**35-801. Clothing and equipment; prohibited acts; violation; penalty.**

- (1) No person shall knowingly transfer, sell, or offer for sale in this state to any fire department or firefighter any item of clothing or equipment designed and intended to protect firefighters from death or injury while

fighting fires unless the item of clothing or equipment meets or exceeds the minimum standards established for such item of clothing or equipment by the National Fire Protection Association in effect at the time of such transfer, sale, or offer for sale.

- (2) No fire department shall knowingly purchase and no fire department or firefighter shall knowingly accept any item of clothing or equipment intended to protect firefighters from death or injury while fighting fires unless the item of clothing or equipment meets or exceeds the minimum standards established for such item of clothing or equipment by the National Fire Protection Association in effect at the time of such purchase or acceptance.
- (3) Any person violating subsection (1) or (2) of this section shall be guilty of a Class III misdemeanor.
- (4) For purposes of this section:
  - (a) Clothing or equipment shall not include station or work uniforms or other items of personal clothing worn or intended to be worn under protective clothing or equipment while fighting fires; and
  - (b) Fire department shall include any city, village, county, township, district, or other public or private fire department.

**Source:** Laws 1992, LB 27, § 1; Laws 1993, LB 67, § 1. Effective date September 9, 1993.

**35-901. Volunteer departments; trust fund; established; use; section, how construed; expenditures of public funds; procedure; gambling money; restrictions.**

- (1) For purposes of this section, volunteer department shall mean volunteer fire department or volunteer first-aid, rescue, or emergency squad or volunteer fire company serving any city, village, county, township, or rural or suburban fire protection district.
- (2) Each volunteer department may establish a volunteer department trust fund. All donations, contributions, bequests, or annuities made to the volunteer department and all money raised by or for the volunteer department shall be deposited in the trust fund. The trust fund shall be under the control of the volunteer department, and the volunteer department may make expenditures from the trust fund as it deems necessary. The treasurer of the volunteer department shall be the custodian of the trust fund.
- (6) The trust fund shall not be considered public funds or funds of any city, village, county, township, or rural or suburban fire protection district for any purpose, including the Nebraska Budget Act, nor shall any city, village, county, township, or rural or suburban fire protection district incur any liability solely by reason of any expenditure from such fund except liability for property when any city, village, county, township, or rural or suburban fire protection district receives title to property acquired with money from such fund.
- (7) Nothing in this section shall be construed or deemed to permit a violation of the Nebraska Liquor Control Act.
- (5) All expenditures of public funds as defined in the Nebraska Budget Act for support of a volunteer department or its purposes shall be submitted as claims, approved by the taxing authority supporting such department or its purposes, and published as required by law. All such claims shall be properly itemized for proposed expenditure or reimbursement for costs already incurred and paid except as may be otherwise permitted pursuant to section 35-106.
- (6) All money raised pursuant to the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, and the Nebraska Small Lottery and Raffle Act shall be subject to such acts with respect to the deposit and expenditure of such money.

**Source:** Laws 1993, LB 516 § 1.

**35-1001. Death or disability as a result of cancer; prima facie evidence.** For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter, and who suffers death or disability as a result of cancer, including, but not limited to, cancer affecting the skin or the central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral, or prostate systems, evidence which demonstrates that

- (1) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of cancer,
- (2) such firefighter or firefighter-paramedic was exposed to a known carcinogen, as defined on July 19, 1996, by the International Agency for Research on Cancer, while in the service of the fire department, and
- (3) such carcinogen is reported by the agency to be a suspected or known cause of the type of cancer the firefighter or firefighter-paramedic has, shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of sections 16-1020 to 16-1042, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.

**Source:** Laws 1996, LB 1076, § 45.

**35-1101. Fire Recognition Day; designation.** The second Saturday in May is designated and shall be known as Fire Recognition Day, and exercises appropriate for the subject and day may be exercised by any fire department.

**Source:** Laws 1997, LB 347, § 2.

**35-1201. Act, how cited.** Sections 35-1201 to 35-1207 shall be known and may be cited as the Mutual Finance Assistance Act.

**Source:** Laws 1998, LB 1120, § 1. Operative date June 1, 1998.

**35-1202. Mutual finance organization, defined.** For purposes of the Mutual Finance Assistance Act, mutual finance organization means a group of rural or suburban fire protection districts, cities, or villages which enter into an agreement pursuant to section 35-1204 to cooperate for purposes of financing operational and equipment needs for fire protection, emergency response, or training within their joint areas of operation.

**Source:** Laws 1998, LB 1120, § 2. Operative date June 1, 1998.

**35-1203. Mutual Finance Assistance Fund; created; use; investment.** The Mutual Finance Assistance Fund is created. The fund shall be used to provide assistance to rural or suburban fire protection districts and mutual finance organizations which qualify under the Mutual Finance Assistance Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1998, LB 1120, § 3. Operative date June 1, 1998.

**35-1204. Mutual finance organization; creation by agreement.** A mutual finance organization may be created by agreement among its members pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The agreement shall contain a provision which requires all members of the mutual finance organization to levy the same property tax rate within their boundaries for the purpose of jointly funding the operations of all members of the mutual finance organization, except that the agreed-upon property tax rate shall exclude levies for bonded indebtedness and lease-purchase contracts in existence on July 1, 1998.

**Source:** Laws 1998, LB 1120, § 4; Laws 1999, LB 87, § 70.

**35-1205. Distributions from fund; qualifications.**

- (1) Any rural or suburban fire protection district which contains within its boundaries
  - (a) an assumed population of thirty thousand or more or
  - (b) at least eighty percent of the assumed population of any one county which is contained in whole or in part within the district residing outside the city limits of any city of the first, primary, or metropolitan class in such county shall receive a distribution from the Mutual Finance Assistance Fund pursuant to section 35-1206.
- (2) Any mutual finance organization which
  - (a) has entered into an agreement pursuant to section 35-1204 and
  - (b) contains within the boundaries of its members
    - (i) an assumed population of thirty thousand or more or
    - (ii) at least eighty percent of the assumed county population of any one county which is contained in whole or in part within the mutual finance organization residing outside the city limits of any city of the first, primary, or metropolitan class in such county shall receive a distribution from the fund pursuant to section 35-1206.
- (3) For purposes of this section:
  - (a) The assumed population residing within the boundaries of a rural or suburban fire protection district or mutual finance organization equals
    - (i) the estimated county population as determined based on the most recent estimates of the United States Bureau of the Census for counties, minus
    - (ii) the estimated population of all cities and villages in the county as certified pursuant to section 77-3,119, multiplied by
    - (iii) a fraction, the numerator of which is the valuation within the rural or suburban fire protection district or mutual finance organization which is not within a city or village and the denominator of which is the valuation in the county which is not contained within a city of the first, primary, or metropolitan class, and added to



- (iv) the most recent estimated population of all cities of the second class and villages in the fire protection district or mutual finance organization as certified pursuant to section 77-3,119;
- (b) The assumed county population residing outside the city limits of any city of the first, primary, or metropolitan class equals
  - (i) the most recent estimated county population as determined based on the most recent estimates of the United States Bureau of the Census for counties minus
  - (ii) the most recent estimated population of all cities of the first, primary, or metropolitan class in the county as certified pursuant to section 77-3,119;
- (c) If a city or village is located in more than one county, the population of the city or village which resides in the county is presumed to be in proportion to the valuation of such city or village which is located in the county; and
- (d) If the district or mutual finance organization is located in more than one county and the district or mutual finance organization meets the threshold in subsection (1) or (2) of this section in only one county, the district or mutual finance organization shall qualify for assistance under this section.

**Source:** Laws 1998, LB 1120, § 5; Laws 1999, LB 141, § 7.

**35-1206. Distributions from fund; amount; disqualification; when.**

- (1) Rural and suburban fire protection districts or mutual finance organizations which qualify for assistance under section 35-1205 shall receive ten dollars times the assumed population of the fire protection district or mutual finance organization as calculated in subsection (3) of such section plus the population of any city of the first class that is part of the district or mutual finance organization, not to exceed three hundred thousand dollars for any one district or mutual finance organization. If the district or mutual finance organization is located in more than one county and meets the threshold for qualification in subsection (1) or (2) of section 35-1205 in one of such counties, the district or mutual finance organization shall receive assistance under this section for all of its assumed population, including that which is assumed population in counties for which the threshold is not reached by the district or mutual finance organization.
- (2) If a mutual finance organization qualifies for assistance under this section and one or more rural or suburban fire protection districts or cities or villages fail to levy a tax rate equal to the other districts or cities or villages as required under the mutual finance agreement, the mutual finance organization shall be disqualified for assistance in the following year and each subsequent year until the year following any year for which all districts and cities and villages in the mutual finance organization levy the same tax rate as required by a mutual finance organization agreement.

**Source:** Laws 1998, LB 1120, § 6; Laws 1999, LB 141, § 8.

**35-1207. Application for distribution; State Treasurer; duties.**

- (1) Any rural or suburban fire protection district or mutual finance organization seeking funds pursuant to the Mutual Finance Assistance Act shall submit an application for funding to the State Treasurer by July 1 or ten days after June 1, 1998, whichever is later. The State Treasurer shall develop the application which requires calculations showing assumed population eligibility under section 35-1205 and the distribution amount under section 35-1206. If the applicant is a mutual finance organization, it shall attach to its first application a copy of the agreement pursuant to section 35-1204 and attach to any subsequent application a copy of an amended agreement or an affidavit stating that the previously submitted agreement is still accurate and effective.
- (2) The State Treasurer shall review all applications for eligibility for funds under the act and approve any application which is accurate and demonstrates that the applicant is eligible for funds. On or before August 15, the State Treasurer shall notify the applicant of approval or denial of the application and certify the amount of funds for which an approved applicant is eligible. The decision of the State Treasurer may be appealed as provided in the Administrative Procedure Act.
- (3) Funds shall be disbursed by the State Treasurer in two payments which are as nearly equal as possible, to be paid on or before November 1 and May 1. If the Mutual Finance Assistance Fund is insufficient to make all payments to all applicants in the amounts provided in section 35-1206, the State Treasurer shall prorate payments to approved applicants. Funds remaining in the Mutual Finance Assistance Fund on June 1 shall be transferred to the General Fund before July 1.

**Source:** Laws 1998, LB 1120, § 7. Operative date June 1, 1998.

## Volunteer Emergency Responders Recruitment and Retention Act

**35-1301. Act, how cited.** Sections 35-1301 to 35-1330 shall be known and may be cited as the Volunteer Emergency Responders Recruitment and Retention Act.

**Source:** Laws 1999, LB 849, § 1; Laws 2001, LB 808, § 5.

**35-1302. Legislative findings.**

- (1) The Legislature recognizes that volunteer firefighters and rescue squad personnel have provided fire suppression and emergency response services to their local communities for over a century at only a fraction of the cost to the taxpayers which would have resulted from implementing a system of paid fire departments and rescue squad services. Many cities, villages, and rural areas could not afford the cost of maintaining their current level of emergency response services without the presence of a local pool of committed and dedicated volunteer firefighters and volunteer rescue squad personnel. It is necessary for the public health, safety, and welfare of the people in many Nebraska communities to encourage the recruitment and retention of such individuals as volunteer emergency responders.
- (2) The Legislature finds that the duties and responsibilities of the volunteer personnel in fire departments and rescue squads in the State of Nebraska have become increasingly complex and time-consuming, requiring an ever higher degree of dedication to cope with new challenges and technological change. The Legislature recognizes that volunteer fire departments and rescue squads must encourage a high level of training and professionalism among their volunteer personnel in order to respond to these increasingly complex and hazardous responsibilities.
- (3) The Legislature finds that Nebraska communities which rely on volunteers to provide fire protection and emergency response services are faced with numerous economic and demographic trends and conditions which make the recruitment and retention of qualified volunteers increasingly difficult and that, as a consequence, some volunteer departments are trying to cope with declining rosters of active volunteers.
- (4) The Legislature finds that the recruitment and retention of qualified men and women in emergency response capacities in volunteer fire departments is a matter of statewide as well as local concern and that it is appropriate for the state to assist local political subdivisions in achieving that goal. Further, the Legislature finds that the expenditure of local tax revenue for purposes of the Volunteer Emergency Responders Recruitment and Retention Act will significantly benefit the public health, safety, and welfare in participating cities, villages, counties, and fire protection districts and that such expenditures are for a public purpose.
- (5) Therefore, the Legislature finds that cities of the first class, cities of the second class, villages, and rural and suburban fire protection districts should be encouraged and assisted in their efforts to retain trained and qualified volunteer fire safety, rescue squad, and emergency response personnel to serve their local communities and should be granted the authority to participate in a local option incentive program designed to provide for the payment of service award benefits which reward the length of service of active volunteer members of volunteer fire departments and volunteer rescue squads. It is the intent of the Legislature that such programs will be developed, organized, structured, and administered to satisfy the length of service award plan requirements of section 457(e)(11) of the Internal Revenue Code as modified by the Small Business Job Protection Act of 1996 so as to insure that benefits received by participants will not be subject to taxation until actually distributed at age sixty-five or as otherwise provided in the Volunteer Emergency Responders Recruitment and Retention Act.

**Source:** Laws 1999, LB 849, § 2.

**35-1303. Terms, defined.** For purposes of the Volunteer Emergency Responders Recruitment and Retention Act:

- (1) Active emergency responder means a person who has been approved by the duly constituted authority in control of a volunteer department as a volunteer member of the department who is performing service as both a firefighter and on a rescue squad in the protection of life, health, or property from fire or other emergency, accident, illness, or calamity in connection with which the services of such volunteer department are required and whose services and activities during a year of service meet the minimum requirements for qualification as an active member of his or her volunteer department as established by section 35-1309.01;
- (2) Active rescue squad member means a person who has been approved by the duly constituted authority in control of a volunteer department as a volunteer member of the department who is performing service as part of a rescue squad in the protection of life or health from emergency, accident, illness, or calamity in connection with which the services of such volunteer department are required and whose services and

- activities during a year of service meet the minimum requirements for qualification as an active member of his or her volunteer department as established by section 35-1309.01;
- (3) Active volunteer firefighter means a person who has been approved by the duly constituted authority in control of a volunteer department as a volunteer member of the department who is performing service as a firefighter in the protection of life or property from fire or other emergency, accident, or calamity in connection with which the services of such volunteer department are required and whose services and activities during a year of service meet the minimum requirements for qualification as an active member of his or her volunteer department as established by section 35-1309.01;
- (4) Annual account means a separate account of a city, village, or rural or suburban fire protection district conducting a service award benefit program established for each year of service in which such program is being conducted to which is credited all funds, from whatever source, furnished for the purpose of providing service award benefits to qualifying participants in the service award benefit program during that year of service, with the funds in the account to be held in trust and invested for ultimate payment as service award benefits to those qualifying participants;
- (5) City of the first class, city of the second class, village, rural fire protection district, and suburban fire protection district means such political subdivisions as they are defined in statute, and when such political subdivisions are granted authority pursuant to the Volunteer Emergency Responders Recruitment and Retention Act to engage in any conduct authorized by the act, the use of these terms shall be construed to mean and include any combination of two or more of these political subdivisions acting in concert pursuant to an agreement entered into under the terms of the Interlocal Cooperation Act or the Joint Public Agency Act;
- (6) Emergency response services means the services provided by a volunteer department in the protection of life, health, or property from fire or other emergency, accident, illness, or calamity;
- (7) Nonforfeitable means the unconditional and legally enforceable right by a participant or beneficiary to receive service award benefits pursuant to a service award benefit program at the entitlement age or under the circumstances specified in the Volunteer Emergency Responders Recruitment and Retention Act;
- (8) Participant means an active emergency responder, active rescue squad member, or active volunteer firefighter who is currently eligible or who will, upon the completion of the requirements of the act, be eligible to receive a service award benefit;
- (9) Service award benefit program means a program established, governed, administered, and maintained pursuant to the act which provides service award benefits for active emergency responders, active rescue squad members, and active volunteer firefighters, as provided for in the act, for each year of active service, as defined by the standard criteria for qualified active service, and which program meets the length of service award plan requirements of section 457(e)(11) of the Internal Revenue Code as defined in section 49-801.01;
- (10) Specified years of service means the total number of years of service which must be served by a volunteer member of a volunteer department to qualify that member for a service award benefit as determined by the governing body of the city, village, or rural or suburban fire protection district conducting the program;
- (11) Standard criteria for qualified active service means the minimum annual service requirements for the qualification of a volunteer member of a volunteer department as an active emergency responder, active rescue squad member, or active volunteer firefighter so as to enable such person to participate in a service award benefit program as provided in section 35-1309.01;
- (12) Unallocated contributions means that portion of an annual account representing the proportionate equal shares of
- (a) the principal amount of all contributions from whatever source deposited into the annual account for such year of service and
  - (b) all income derived therefrom, attributable to participants listed on the certification list for that year of service who have subsequently ceased to be volunteers or participants and, in consequence, failed to qualify for a service award benefit as provided in section 35-1312 or 35-1313;
- (13) Volunteer means a person who meets the requirements necessary to qualify as a bona fide volunteer as defined in section 457(e)(11)(B)(i) of the Internal Revenue Code, as defined in section 49-801.01, and who, on behalf of and at the request or with the permission of a city, village, or rural or suburban fire protection district, engages in activities related to fire protection, fire suppression, or emergency response for the purpose of protecting human life, health, or property;
- (14) Volunteer department means any volunteer fire department or volunteer first-aid, rescue, ambulance, or emergency squad or volunteer fire company, association, or organization serving any city, village, or rural

or suburban fire protection district by providing fire protection or emergency response services for the purpose of protecting human life, health, or property; and

- (15) Year of service means the twelve-month period established under a service award benefit program in which the services and activities of a volunteer member of a volunteer department are monitored to determine if the volunteer qualifies for certification by the duly constituted authority of the volunteer department as meeting the standard criteria for qualified active service and each succeeding twelve-month period of the program.

**Source:** Laws 1999, LB 849, § 3; Laws 2000, LB 968, § 17; Laws 2001, LB 808, § 6; Laws 2002, LB 1110, § 1. Effective date April 18, 2002.

**35-1304.** Repealed. Laws 2001, LB 808, s. 23.

**35-1305.** Repealed. Laws 2001, LB 808, s. 23.

**35-1306.** Repealed. Laws 2001, LB 808, s. 23.

**35-1307.** Repealed. Laws 2001, LB 808, s. 23.

**35-1308.** Repealed. Laws 2001, LB 808, s. 23.

**35-1309. Service award benefit program; authorized.**

- (1) After March 1, 2000, any city of the first class, city of the second class, village, rural fire protection district, or suburban fire protection district which relies in whole or in part upon a volunteer department for emergency response services may adopt a service award benefit program as provided in the Volunteer Emergency Responders Recruitment and Retention Act.
- (2) No city, village, or fire protection district shall be required to adopt a service award benefit program. Nothing in the act shall be construed to mandate the creation of a service award benefit program in any city, village, or fire protection district. The act shall not be construed to prohibit any city, village, or fire protection district from ending or eliminating any service award benefit program after its adoption, except that a city, village, or fire protection district may not end its program or its responsibility under its program with regard to any year of service completed prior to such elimination.
- (3) Each service award benefit program shall include provisions governing the procedures to be followed in the tallying, recording, verifying, and auditing of points earned by volunteers and provisions which provide for the collection of such other information regarding participants as may be requested by the State Fire Marshal to facilitate administration of the program.

**Source:** Laws 1999, LB 849, § 9; Laws 2001, LB 808, § 7; Laws 2002, LB 1110, § 2. Effective date April 18, 2002.

**35-1309.01. Standard criteria for qualified active service; computation.**

- (1) The standard criteria for qualified active service shall be based on a total of one hundred possible points per year. A person must accumulate at least fifty points out of the possible one hundred points during a year of service in order to qualify as an active emergency responder, active rescue squad member, or active volunteer firefighter. Points shall be awarded as provided in this section.
- (2) A fixed amount of twenty-five points shall be awarded to a person for responding to ten percent of the emergency response calls which are (a) dispatched from his or her assigned station or company during a year of service and (b) relevant to the appropriate duty category of the person. An emergency response call shall mean any dispatch involving an emergency activity that an emergency responder, rescue squad member, or volunteer firefighter is directed to do by the chief of the fire department, the chief of the ambulance service, or persons authorized to act for the chiefs. No points shall be awarded for responding to less than ten percent of the emergency response calls.
- (3) For participation in training courses, a maximum total of not more than twenty-five points may be awarded on the following basis:
- (a) For courses under twenty hours duration: One point shall be awarded per two hours, with a maximum of five points awarded per course;
- (b) For courses of between twenty hours and forty hours duration: Five points shall be awarded, plus one point awarded for each hour after the first twenty hours, with a maximum of ten points awarded per course; and
- (c) For courses over forty hours duration: Fifteen points shall be awarded per course.

- (4) Drills shall mean regular monthly drills used for instructional and educational purposes, as well as mock emergency response exercises to evaluate the efficiency or performance by the personnel of a volunteer department. Each drill shall last at least two hours. One point shall be awarded per drill. For participation in drills, a maximum total of not more than twenty points shall be awarded.
- (5) For attendance at an official meeting of the volunteer department or mutual aid organization, one point shall be awarded per meeting up to a maximum total of not more than ten points.
- (6) A fixed award of ten points shall be awarded for completion of a term in one of the following elected or appointed positions:
  - (a) An elected or appointed position defined in the volunteer department's constitution or bylaws;
  - (b) an elected or appointed position of a mutual aid organization; or
  - (c) an elected office of the Nebraska State Volunteer Firefighter's Association or other organized associations dealing with emergency response services in Nebraska.
- (7) For participation in activities of fire prevention communicated to public, open house, speaking engagements on behalf of the volunteer department, presenting fire or rescue equipment at a parade or other public event, attendance at the Nebraska State Volunteer Firefighter's Association Convention, attendance at a meeting of a governing body of a city, village, or rural or suburban fire protection district on behalf of the department, or other activities related to emergency services not covered in this subsection, one point shall be awarded per activity, but no more than one point shall be awarded per day, up to a maximum total of not more than ten points.
- (8) Activities which may qualify a person to receive points in more than one of the categories described in subsections (2) through (7) of this section shall only be credited in one category.

**Source:** Laws 2001, LB 808, § 8.

**35-1310. Certification administrator; designation; duties; certification list; hearing; appeal.**

Each volunteer department serving a city, village, or rural or suburban fire protection district conducting a service award benefit program shall designate one member of the department to serve as the certification administrator. The designation of such individual as the certification administrator shall be confirmed and approved by the governing body of that city, village, or rural or suburban fire protection district. It shall be the duty of the certification administrator to keep and maintain records on the activities of all volunteer members and participants and award points for such activities based upon the standard criteria for qualified active service. Each volunteer member and participant shall be provided by the certification administrator with notice of the total points he or she has accumulated during each six-month period in which the program is in operation. No later than thirty days following the end of each year of service, the certification administrator shall forward to the governing body of the city, village, or fire protection district a report specifying the name of each volunteer member of the volunteer department, the number of points accumulated by each volunteer during the year of service, and the names of those volunteers who have qualified as active emergency responders, active rescue squad members, or active volunteer firefighters. At the time of the filing of the report, each volunteer member of the department whose name does not appear on the list of qualified volunteers shall be informed of such fact in writing by the certification administrator by mailing the same by first-class United States mail, postage prepaid. No sooner than forty-five days nor later than sixty days after the end of each year of service, the governing body of the city, village, or fire protection district conducting the program shall formally approve and certify the list of those volunteers who have qualified as active emergency responders, active rescue squad members, or active volunteer firefighters. Any volunteer member whose name does not appear on the approved certification list may, within fifteen days after the filing of the report, appeal in writing to the governing body to have his or her name added to the certification list by filing the same with the clerk of the governing body. The appeal shall set out the basis upon which the volunteer believes he or she should be placed upon the certification list and shall specify whether or not a public hearing is requested. If requested by the appealing party, the governing body shall hold a public hearing on the appeal prior to or upon the date upon which the certification list is approved. The governing body shall designate an appropriate person to investigate the appeal and report on its merits to the governing body which shall, by majority vote, add the name of the person to the certification list if there is sufficient evidence to indicate that the individual performed sufficient activities or services to qualify as an active emergency responder, active rescue squad member, or active volunteer firefighter as provided in the standard criteria for qualified active service during the prior year of service. The decision of the governing body may be appealed to the district court of the county in which the volunteer member resides.

**Source:** Laws 1999, LB 849, § 10; Laws 2001, LB 808, § 9; Laws 2005, LB 268, § 1; Effective date September 4, 2005.

**35-1311.** Repealed. Laws 2001, LB 808, s. 23.

**35-1311.01. Services of volunteers; reports.** Each city, village, or rural or suburban fire protection district that relies in whole or in part upon the services of volunteers to provide the jurisdiction with fire protection and emergency response services shall file with the State Fire Marshal no later than July 1 of each year a report specifying the number of volunteer members serving the city, village, or fire protection district, whether their responsibilities involved fire protection or emergency response, and such other information as may be requested by the State Fire Marshal for the period of the immediately preceding calendar year. The State Fire Marshal shall compile the responses reported by the cities, villages, and rural and suburban fire protection districts and shall file a report on such information with the Clerk of the Legislature for distribution to the members of the Legislature no later than December 1, 2001, and no later than each succeeding December 1.

**Source:** Laws 2001, LB 808, § 10.

**35-1312. Service award benefit payments; when; section; how construed.**

- (1) Except as provided in section 35-1313, service award benefits provided under a service award benefit program shall be paid to a participant only upon the date he or she reaches the age of sixty-five or upon the first day of the first year of service after the first year of service in which such participant was not on the certification list of his or her volunteer department, whichever is later, if the participant has been an active emergency responder, active rescue squad member, or active volunteer firefighter for the number of years of service specified by the city, village, or fire protection district administering the service award benefit program.
- (2) Upon the completion of the specified years of service as determined by the city, village, or rural or suburban fire protection district, the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which such participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in
  - (a) the principal amount of all contributions deposited into the annual account for such year of service and
  - (b) all income derived therefrom.
- (3) Nothing in this section shall be construed as preventing a city, village, or rural or suburban fire protection district from establishing a vesting schedule under which a stated proportion of a participant's interest in his or her annual accounts becomes nonforfeitable upon completion of a specified number of years of service, subject to sections 35-1313, 35-1323, and 35-1329.

**Source:** Laws 1999, LB 849, § 12; Laws 2001, LB 808, § 11; Laws 2005, LB 268, § 2.  
Effective date September 4, 2005.

**35-1313. Service award benefits; payment upon military service, disability, or death.**

- (1)
  - (a) Service award benefits may be paid to a participant as provided in subsection (1) of section 35-1312 notwithstanding that such participant has not been an active emergency responder, active rescue squad member, or active volunteer firefighter for the specified years of service if in the years of service in which such participant did not qualify such failure was due
    - (i) to a period during a year of service in the armed forces of the United States upon active duty or
    - (ii) to an injury or disability incurred by the participant and directly related to the participant's duties or activities as a volunteer member of the volunteer department.
  - (b) Upon the completion of the specified years of service pursuant to this subsection, the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which such participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in
    - (i) the principal amount of all contributions deposited into the annual account for such year of service and
    - (ii) all income derived therefrom.
- (2) Service award benefits shall be paid to a participant as provided in subsection (1) of section 35-1312 notwithstanding that such participant had not been an active emergency responder, active rescue squad member, or active volunteer firefighter for the specified years of service if such participant suffered a permanent disability resulting from an injury incurred by the participant and directly related to the participant's duties or activities as a volunteer member of the volunteer department which disqualified the participant from further service as a volunteer. At the time such disability is confirmed and certified to the governing body of the city, village, or rural or suburban fire protection district conducting the service award benefit program, the participant shall have a nonforfeitable interest in the annual accounts of all years of

service in which such participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in

- (a) the principal amount of all contributions deposited into the annual account for such year of service and
  - (b) all income derived therefrom.
- (3) Service award benefits shall be paid to the beneficiary of a participant notwithstanding that such participant has not been an active emergency responder, active rescue squad member, or active volunteer firefighter for the specified years of service if such participant dies in the course of his or her active service as a volunteer member of a volunteer department or dies as the result of injuries incurred by the participant directly related to his or her duties or activities as a volunteer member of a volunteer department. At the time of the participant's death, the beneficiary of the participant shall have a nonforfeitable interest in the annual accounts of all years of service in which the participant is listed on the certification list. Such interest is equivalent to a proportionate equal share with all other participants listed on the certification list for a year of service in
- (a) the principal amount of all contributions deposited into the annual account for such year of service and
  - (b) all income derived therefrom.
- (4) Service award benefits shall be paid to the beneficiary of a participant upon the death of a participant notwithstanding that such participant had not reached the age of sixty-five if such participant would have been entitled to receive service award benefits at age sixty-five pursuant to subsection (1) of section 35-1312 or subsection (1) or (2) of this section.

**Source:** Laws 1999, LB 849, § 13; Laws 2001, LB 808, § 12.

**35-1314. Participant; failure to qualify; forfeiture.** Any participant in a service award benefit program who ceases to be a volunteer or participant and consequently fails to qualify for a service award benefit pursuant to section 35-1312 or 35-1313 shall forfeit all rights to any future distribution of any portion of the principal amount of any contributions made to an annual account for any service year in which such participant was on the certification list and any income derived from such contributions.

**Source:** Laws 1999, LB 849, § 14.

**35-1315. Service award benefit program; annual account.** Each city, village, or rural or suburban fire protection district conducting a service award benefit program shall establish an annual account for each year of service in which such program is being conducted. All funds from whatever source furnished for the purpose of providing service award benefits to active emergency responders, active rescue squad members, and active volunteer firefighters participating in the service award benefit program during a year of service shall be placed into the annual account for that year of service.

**Source:** Laws 1999, LB 849, § 15.

**35-1316. Annual account; appropriations and contributions; liability; limitation.**

- (1) Each city, village, or rural or suburban fire protection district conducting a service award benefit program shall appropriate for the annual account for each year of service in which such program is in existence a sum to be determined by the governing body as sufficient to meet the purposes of the program.
- (2) The total amount of all contributions from all sources made to any annual account shall not exceed three thousand dollars times the number of participants listed on the certification list for the year of service covered by that annual account. The service award benefit paid to a qualifying participant or beneficiary shall not include in any participant's share of an annual account any contributions made to the annual account for that year of service which are allocable to the participant or beneficiary in excess of the sum of three thousand dollars and any income derived from the investment of those excess sums.
- (3) No city, village, or rural or suburban fire protection district conducting a service award benefit program shall incur any obligation or liability with regard to contributions into any annual account under such program beyond the amount of contributions actually appropriated by such local political subdivision for such purpose and actually distributed into such accounts.

**Source:** Laws 1999, LB 849, § 16; Laws 2001, LB 808, § 13.

**35-1317. Service award benefit; how paid; exempt from judicial process.**

- (1) The service award benefit received by a qualifying participant or beneficiary shall, at the option of the recipient, be in the form of an annuity or lump-sum benefit. No portion of any annual account shall be

subject to attachment, garnishment, execution, or other judicial process for the satisfaction of a debt or claim against any participant or beneficiary and assignments or transfers of any portion shall be void.

- (2) The service award benefit paid to a participant or beneficiary qualifying pursuant to section 35-1312 or 35-1313 shall be the participant's or beneficiary's nonforfeitable share of all annual accounts upon the date of his or her qualification for the service award benefit.

**Source:** Laws 1999, LB 849, § 17.

**35-1318. Eligibility.** Any person who is a paid member of a fire department or other emergency response organization and who receives retirement benefits in consequence of such employment shall not be eligible to participate in any service award benefit program being conducted by the same city, village, or rural or suburban fire protection district which employs the person or which contracts for emergency response services with the fire department or emergency response organization which employs the person.

**Source:** Laws 1999, LB 849, § 18; Laws 2001, LB 808, § 14.

**35-1319. Participant; status as volunteer.** The participation of a volunteer in any service award benefit program conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act and his or her receipt of service award benefits pursuant to such a program shall not for that cause alone alter the relationship of such volunteer to the city, village, or rural or suburban fire protection district as being one of a volunteer for purposes of the Nebraska Workers' Compensation Act.

**Source:** Laws 1999, LB 849, § 19.

**35-1320. Service award benefit program; summary; information to participants; statement required; public records.**

- (1) Any city, village, or rural or suburban fire protection district conducting a service award benefit program shall, within thirty days after the adoption of a program, provide all volunteers providing its local political subdivision with emergency response services with a summary of the program's provisions, including the program's provisions relating to participation and the applicable standard criteria for qualified active service, the manner in which nonforfeitable interests in annual accounts are obtained, the amount of all contributions to the annual account, and any other information relating to participation in the program. The city, village, or rural or suburban fire protection district shall provide copies of the summary to all new volunteer members and to any applicant for membership to the volunteer department.
- (2) Any summary of a program's provisions provided pursuant to this section shall include the following statement and such additional explanation as is deemed appropriate by the sponsoring city, village, or rural or suburban fire protection district: Due to definitive interpretations of the relevant provisions of the Internal Revenue Code, in order to insure that funds deposited on behalf of a participant are not taxable to the participant in that or any subsequent year in which they are nonforfeitable, any funds held by a city, village, or rural or suburban fire protection district on behalf of qualifying program participants will be subject to the claims of creditors of the city, village, or rural or suburban fire protection district conducting the program in the event of the insolvency or bankruptcy of that city, village, or district.
- (3) Any material modification to the program shall be provided in writing to all participants within thirty days after its adoption by the city, village, or rural or suburban fire protection district.
- (4) No later than December 1 of each year following the end of the first full year of service after the adoption of a service award benefit program, the city, village, or rural or suburban fire protection district shall provide to each participant listed in the certification list for that year of service a summary and copy of the relevant documents relating to the contributions to the annual account for such year of service. By December 1 of each subsequent year, the city, village, or rural or suburban fire protection district shall provide each participant who appears for the first time in the certification list for the immediately preceding year of service with the same information.
- (5) All documents relating to any program, the certification lists, the annual accounts, the investment of the funds of the annual accounts, the contributions to the account and the income derived therefrom, and the identity of the administrator of the annual accounts shall be public records within the meaning of section 84-712.01.

**Source:** Laws 1999, LB 849, § 20; Laws 2001, LB 808, § 15; Laws 2005, LB 268, § 3  
Effective date September 4, 2005.

**35-1321. Service award benefit program; adoption; notice to State Fire Marshal.** Within thirty days after the adoption of a service award benefit program, the city, village, or rural or suburban fire protection district shall notify



the State Fire Marshal of such fact.

**Source:** Laws 1999, LB 849, § 21; Laws 2001, LB 808, § 16.

**35-1322. Annexation, merger, or consolidation; established service award benefit program; effect.**

Whenever by reason of annexation, merger, or consolidation a city, village, or rural or suburban fire protection district conducting a service award benefit program ceases to exist and becomes part of another city, village, or rural or suburban fire protection district which is conducting a service award benefit program, the annual accounts and certification lists of the city, village, or rural or suburban fire protection district which has ceased to exist shall be transferred and merged with the annual accounts and certification lists of the other city, village, or rural or suburban fire protection district. For purposes of the Volunteer Emergency Responders Recruitment and Retention Act, the prior participation of volunteers in the program of the city, village, or rural or suburban fire protection district which has ceased to exist up to the date upon which such body ceased to exist shall be treated as if the participation had been in the program of the other city, village, or rural or suburban fire protection district.

**Source:** Laws 1999, LB 849, § 22.

**35-1323. Annexation, merger, or consolidation; no service award benefit program; effect.** Whenever by reason of annexation, merger, or consolidation a city, village, or rural or suburban fire protection district conducting a service award benefit program ceases to exist and becomes part of another city, village, or rural or suburban fire protection district which is not conducting a service award benefit program, each person listed on the certification lists for all years of service completed prior to the date upon which the city, village, or rural or suburban fire protection district ceased to exist shall be deemed to have a nonforfeitable interest in each annual account for the years of service in which he or she was listed, notwithstanding that the person may not have qualified pursuant to sections 35-1312 and 35-1313, and shall be entitled to receive a service award benefit as provided by the provisions of the Volunteer Emergency Responders Recruitment and Retention Act as if he or she had met the qualification requirements of sections 35-1312 and 35-1313.

**Source:** Laws 1999, LB 849, § 23.

**35-1324. Annual accounts; deposits and other property held in grantor trust; effect.**

- (1) All deposits made to annual accounts under any service award benefit program conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act, all property and rights purchased with such deposits, and all investment income, property, or rights attributable to such deposits shall be held in a grantor trust within the meaning of subtitle A, chapter 1, subchapter J, part I, subpart E of the Internal Revenue Code, as defined in section 49-801.01, established by the city, village, or rural or suburban fire protection district conducting the program, until such time as payments shall be paid under the terms of a program and the act. All such assets held in trust shall be invested by the city, village, or rural or suburban fire protection district conducting the program in certificates of deposit, in time deposits, and in any securities in which the state investment officer is authorized to invest pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and as provided in the authorized investment guidelines of the Nebraska Investment Council in effect on the date the investment is made.
- (2) The trust established pursuant to subsection (1) of this section shall provide that all deposits made to the trust, all property and rights purchased with the deposits, and all investment income, property, or rights attributable to such deposits under the Volunteer Emergency Responders Recruitment and Retention Act, until paid to participants or their beneficiaries, are subject to the claims of the creditors of the city, village, or rural or suburban fire protection district conducting the program in the event of the insolvency or bankruptcy of the city, village, or rural or suburban fire protection district. With respect to any participant or beneficiary, the trust established pursuant to subsection (1) of this section shall not be subject to garnishment, attachment, levy, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever and shall not be assignable.
- (3) The trust established pursuant to subsection (1) of this section may contain such other terms and provisions as are necessary to insure that the participation by a participant in the service award benefit program does not result in taxable income to such participant under any provision of the Internal Revenue Code, as defined in section 49-801.01, until such time as service award benefits are paid pursuant to section 35-1312 or 35-1313.

**Source:** Laws 1999, LB 849, § 24; Laws 2001, LB 808, § 17; Laws 2005, LB 268, § 4  
Effective date September 4, 2005.

**Cross References:** Nebraska Capital Expansion Act, see section 72-1269. Nebraska State Funds Investment Act, see section 72-1260.

**35-1325.** Repealed. Laws 2001, LB 808, s. 23.

**35-1326. Administrative services agreements authorized.** Any city, village, or rural or suburban fire protection district conducting a program may enter into an administrative services agreement with an appropriate organization authorized to conduct business in Nebraska to administer the service award benefit programs provided for in the Volunteer Emergency Responders Recruitment and Retention Act. No such agreement shall be entered into unless it will result in administrative economy and will be in the best interests of the participating cities, villages, and fire protection districts and the participants in such programs.

**Source:** Laws 1999, LB 849, § 26; Laws 2001, LB 808, § 18.

**35-1327. Agreement; provisions.** The agreement authorized by section 35-1326 shall provide:

- (1) That the organization shall make all disbursements under the contract or contracts issued by it, such disbursements to be made in such manner and amounts as directed by the city, village, or rural or suburban fire protection district conducting the service award benefit program whether on account of disability, death, the termination of a program, or the attainment of the appropriate age by a qualifying participant;
- (2) That the organization shall include with each disbursement a statement showing the gross payment, any taxes withheld, and the net amount paid and an annual statement of account;
- (3) That the organization shall furnish to the city, village, or district a statement of all disbursements and withholdings as stipulated in the agreement on at least an annual basis, as agreed by the parties;
- (4) Hold-harmless clauses protecting each party thereto from the negligent acts of the other or for any loss or claim against one party resulting from release of incorrect or misleading information furnished by the other party;
- (5) For the right of the city, village, or district, either directly or through independent auditors, to examine and audit the organization's records and accounts relating to disbursements made under the agreement;
- (6) Protection to the city, village, or district against assignment of the agreement or the subletting of work done or services furnished under the agreement;
- (7) For termination of the agreement; and
- (8) Such other terms as may be agreed upon and which the city, village, or district determines to be in the best interest of the participating cities, villages, and fire protection districts and the participants in such programs.

**Source:** Laws 1999, LB 849, § 27; Laws 2001, LB 808, § 19.

**35-1328.** Repealed. Laws 2001, LB 808, s. 23.

**35-1329. Service award benefit program; termination; effect.** Whenever a city, village, or rural or suburban fire protection district conducting a service award benefit program ceases to conduct the service award benefit program, each person listed on the certification lists for all years of service completed prior to the date upon which the city, village, or rural or suburban fire protection district ceases to conduct such a program shall be deemed to have a nonforfeitable interest in each annual account for the years of service in which he or she was listed on the certification list, notwithstanding that the person may not have qualified pursuant to sections 35-1312 and 35-1313, and shall be entitled to receive a service award benefit as provided by the provisions of the Volunteer Emergency Responders Recruitment and Retention Act as if he or she had met the qualification requirements of sections 35-1312 and 35-1313.

**Source:** Laws 1999, LB 849, § 29.

**35-1330. Unallocated contributions forfeited; use.** All unallocated contributions forfeited pursuant to section 35-1314 shall be used by the city, village, or rural or suburban fire protection district to finance the cost of conducting the service award benefit program or, at the discretion of the city, village, or rural or suburban fire protection district, to reduce the current or future deposits to the service award benefit program.

**Source:** Laws 1999, LB 849, § 30; Laws 2001, LB 808, § 20; Laws 2005, LB 268, § 5.  
Effective date September 4, 2005.

**39-608.** Transferred to section 60-6,114.

**39-627.** Transferred to section 60-6,138.

**39-670.** Transferred to section 60-6,164.

**39-672.** Transferred to section 60-6,166.

**39-681.** Transferred to section 60-6,183.

**39-682.** Transferred to section 60-6,184.

**39-6,135.** Transferred to section 60-6,285.

**39-6,151.** Transferred to section 60-6,233.

**44-601. Over-insurance; policies for more than five years prohibited.** It shall be unlawful for any insurance company or any agent to knowingly issue any fire insurance policy upon property within this state for an amount which, with any existing insurance, exceeds the fair value of the property or of the interest of the insured therein, or for a longer time than for five years, except as provided in section 44-812.

**Source:** Laws 1913, c. 154, § 109, p. 454; R.S.1913, § 3246; Laws 1919, c. 190, tit. V, art. VIII, § 1, p. 634; C.S.1922, § 7845; C.S.1929, § 44-701.

**44-602. Over-insurance; procurement unlawful.** It shall be unlawful for any party having an insurable interest in property located in this state to knowingly procure any fire insurance policy upon his interest in such property, for an amount in excess of the fair value of his interest in the property, or for an amount which, with any existing insurance thereon, exceeds the fair value of his interest in the property.

**Source:** Laws 1913, c. 154, § 110, p. 454; R.S.1913, § 3247; Laws 1919, c. 190, tit. V, art. VIII, § 2, p. 635; C.S.1922, § 7846; C.S.1929, § 44-702.

**44-603. Over-insurance; penalties.** Every insurer who makes insurance upon any building or property or interest therein against loss or damage by fire, and every agent who issues a fire insurance policy covering any building or property or interest therein, and every insured who procures a policy of fire insurance upon any building or property or interest therein owned by him, is presumed to know the insurable value of such building or property or interest therein at the time such insurance is effected. Any insurer who knowingly makes insurance on any building or property or interest therein against loss or damage by fire in excess of the insurable value thereof, shall be fined in a sum not less than fifty dollars nor more than one hundred dollars. Any agent who knowingly effects insurance on a building or property or interest therein in excess of the insurable value thereof shall be fined in a sum not less than fifteen nor more than twenty-five dollars.

**Source:** Laws 1913, c. 154, § 111, p. 454; R.S.1913, § 3248; Laws 1919, c. 190, tit. V, art. VIII, § 3, p. 635; C.S.1922, § 7847; C.S.1929, § 44-703.

**44-604.** Repealed. Laws 1989, LB 92, s. 278.

**44-606. Fire insurance; premium; policy must state.** Every fire insurance policy must state on its face the amount of the premium.

**Source:** Laws 1913, c. 154, § 113, p. 455; R.S.1913, § 3250; Laws 1919, c. 190, tit. V, art. VIII, § 5, p. 635; C.S.1922, § 7849; C.S.1929, § 44-705.

**44-624.** Repealed. Laws 1989, LB 92, s. 278.

**44-625.** Repealed. Laws 1989, LB 92, s. 278.

## Workers Compensation Act

**48-115. Employee and worker, defined; inclusions; exclusions; waiver; election of coverage.** The terms employee and worker are used interchangeably and have the same meaning throughout the Nebraska Workers' Compensation Act. Such terms include the plural and all ages and both sexes. For purposes of the act, employee or worker shall be construed to mean:

- (1) Every person in the service of the state or of any governmental agency created by it, including the Nebraska National Guard and members of the military forces of the State of Nebraska, under any appointment or contract of hire, expressed or implied, oral or written;
- (2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106 under any contract of hire, expressed or implied, oral or written, including aliens and also including minors. Minors for the purpose of making election of remedies under the Nebraska Workers' Compensation Act shall have the same power of contracting and electing as adult employees.

As used in subdivisions (1) through (11) of this section, the terms employee and worker shall not be construed to include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer.

If an employee subject to the Nebraska Workers' Compensation Act suffers an injury on account of which he or she or, in the event of his or her death, his or her dependents would otherwise have been entitled to the benefits provided by such act, the employee or, in the event of his or her death, his or her dependents shall be entitled to the benefits provided under such act, if the injury or injury resulting in death occurred within this state, or if at the time of such injury

- (a) the employment was principally localized within this state,
  - (b) the employer was performing work within this state, or
  - (c) the contract of hire was made within this state;
- (3) Volunteer firefighters of any fire department of any rural or suburban fire protection district, city, village, or nonprofit corporation, which fire department is organized under the laws of the State of Nebraska. Such volunteers shall be deemed employees of such rural or suburban fire protection district, city, village, or nonprofit corporation while in the performance of their duties as members of such department and shall be considered as having entered and as acting in the regular course and scope of their employment from the instant such persons commence responding to a call to active duty, whether to a fire station or other place where firefighting equipment that their company or unit is to use is located or to any activities that the volunteer firefighters may be directed to do by the chief of the fire department or some person authorized to act for such chief. Such volunteers shall be deemed employees of such rural or suburban fire protection district, city, village, or nonprofit corporation until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first.

Members of such volunteer fire department, before they are entitled to benefits under the Nebraska Workers' Compensation Act, shall be recommended by the chief of the fire department or some person authorized to act for such chief for membership therein to the board of directors of the rural or suburban fire protection district or nonprofit corporation, the mayor and city commission, the mayor and council, or the chairperson and board of trustees, as the case may be, and upon confirmation shall be deemed employees of such entity. Members of such fire department after confirmation to membership may be removed by a majority vote of the entity's board of directors or governing body and thereafter shall not be considered employees of such entity. Firefighters of any fire department of any rural or suburban fire protection district, nonprofit corporation, city, or village shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of their respective districts, cities, or villages, but only if directed to do so by the chief of the fire department or some person authorized to act for such chief;

- (4) Members of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, which agency, organization, or team is regularly organized under the laws of the State of Nebraska. Such members shall be deemed employees of such agency, organization, or team while in the performance of their duties as members of such agency, organization, or team;
  - (5) Any person fulfilling conditions of probation, or community service as defined in section 29-2277, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277. Such person shall be deemed an employee of the governmental body or agency for the purposes of

- the Nebraska Workers' Compensation Act;
- (6) Volunteer ambulance drivers and attendants and out-of-hospital emergency care providers who are members of an emergency medical service for any county, city, village, rural or suburban fire protection district, nonprofit corporation, or any combination of such entities under the authority of section 13-303. Such volunteers shall be deemed employees of such entity or combination thereof while in the performance of their duties as ambulance drivers or attendants or out-of-hospital emergency care providers and shall be considered as having entered into and as acting in the regular course and scope of their employment from the instant such persons commence responding to a call to active duty, whether to a hospital or other place where the ambulance they are to use is located or to any activities that the volunteer ambulance drivers or attendants or out-of-hospital emergency care providers may be directed to do by the chief or some person authorized to act for such chief of the volunteer ambulance service or out-of-hospital emergency care service. Such volunteers shall be deemed employees of such county, city, village, rural or suburban fire protection district, nonprofit corporation, or combination of such entities until their return to the location from which they were initially called to active duty or until they engage in any activity beyond the scope of the performance of their duties, whichever occurs first. Before such volunteer ambulance drivers or attendants or out-of-hospital emergency care providers are entitled to benefits under the Nebraska Workers' Compensation Act, they shall be recommended by the chief or some person authorized to act for such chief of the volunteer ambulance service or out-of-hospital emergency care service for membership therein to the board of directors of the rural or suburban fire protection district or nonprofit corporation, the governing body of the county, city, or village, or combination thereof, as the case may be, and upon such confirmation shall be deemed employees of such entity or combination thereof. Members of such volunteer ambulance or out-of-hospital emergency care service after confirmation to membership may be removed by majority vote of the entity's board of directors or governing body and thereafter shall not be considered employees of such entity. Volunteer ambulance drivers and attendants and out-of-hospital emergency care providers for any county, city, village, rural or suburban fire protection district, nonprofit corporation, or any combination thereof shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of their respective county, city, village, or district, but only if directed to do so by the chief or some person authorized to act for such chief;
- (7) Members of a law enforcement reserve force appointed in accordance with section 81-1438. Such members shall be deemed employees of the county or city for which they were appointed;
- (8) Any offender committed to the Department of Correctional Services who is employed pursuant to section 81-1827. Such offender shall be deemed an employee of the Department of Correctional Services solely for purposes of the Nebraska Workers' Compensation Act;
- (9) An executive officer of a corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation who owns less than twenty-five percent of the common stock of such corporation or an executive officer of a nonprofit corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation who receives annual compensation of more than one thousand dollars from such corporation. Such executive officer shall be an employee of such corporation under the Nebraska Workers' Compensation Act.
- An executive officer of a corporation who owns twenty-five percent or more of the common stock of such corporation or an executive officer of a nonprofit corporation who receives annual compensation of one thousand dollars or less from such corporation shall not be construed to be an employee of the corporation under the Nebraska Workers' Compensation Act unless such executive officer elects to bring himself or herself within the provisions of the act. Such election shall be in writing and filed with the secretary of the corporation and with the workers' compensation insurer. Such election shall be effective upon receipt by the insurer for the current policy and subsequent policies issued by such insurer and shall remain in effect until the election is terminated, in writing, by the officer and the termination is filed with the insurer or until the insurer ceases to provide coverage for the corporation, whichever occurs first. Any such termination of election shall also be filed with the secretary of the corporation. If such an executive officer has not elected to bring himself or herself within the provisions of the act pursuant to this subdivision and a health, accident, or other insurance policy covering such executive officer contains an exclusion of coverage if the executive officer is otherwise entitled to workers' compensation coverage, such exclusion is null and void as to such executive officer.
- It is the intent of the Legislature that the changes made to this subdivision by Laws 2002, LB 417, shall apply to policies of insurance against liability arising under the act with an effective date on or after January 1, 2003, but shall not apply to any such policy with an effective date prior to January 1, 2003;
- (10) Each individual employer, partner, limited liability company member, or self-employed person who is

actually engaged in the individual employer's, partnership's, limited liability company's, or self-employed person's business on a substantially full-time basis who elects to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act. Such election shall be in writing and filed with the workers' compensation insurer. Such election shall be effective upon receipt by the insurer for the current policy and subsequent policies issued by such insurer and shall remain in effect until the election is terminated, in writing, by such person and the termination is filed with the insurer or until the insurer ceases to provide coverage for the business, whichever occurs first. If any such person who is actually engaged in the business on a substantially full-time basis has not elected to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act pursuant to this subdivision and a health, accident, or other insurance policy covering such person contains an exclusion of coverage if such person is otherwise entitled to workers' compensation coverage, such exclusion shall be null and void as to such person; and

- (11) An individual lessor of a commercial motor vehicle leased to a motor carrier and driven by such individual lessor who elects to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act. Such election is made if he or she agrees in writing with the motor carrier to have the same rights as an employee only for purposes of workers' compensation coverage maintained by the motor carrier. For an election under this subdivision, the motor carrier's principal place of business must be in this state and the motor carrier must be authorized to self-insure liability under the Nebraska Workers' Compensation Act. Such an election shall (a) be effective from the date of such written agreement until such agreement is terminated, (b) be enforceable against such self-insured motor carrier in the same manner and to the same extent as claims arising under the Nebraska Workers' Compensation Act by employees of such self-insured motor carrier, and (c) not be deemed to be a contract of insurance for purposes of Chapter 44. Section 48-111 shall apply to the individual lessor and the self-insured motor carrier with respect to personal injury or death caused to such individual lessor by accident or occupational disease arising out of and in the course of performing services for such self-insured motor carrier in connection with such lease while such election is effective.

**Source:** Laws 1913, c. 198, § 15, p. 583; R.S.1913, § 3656; Laws 1917, c. 85, § 4, p. 201; Laws 1921, c. 122, § 1, p. 519; C.S.1922, § 3038; Laws 1927, c. 39, § 1, p. 169; C.S.1929, § 48-115; Laws 1933, c. 90, § 1, p. 362; Laws 1941, c. 93, § 1, p. 370; C.S.Supp., 1941, § 48-115; R.S.1943, § 48-115; Laws 1959, c. 222, § 1, p. 782; Laws 1961, c. 233, § 1, p. 689; Laws 1963, c. 282, § 1, p. 841; Laws 1967, c. 291, § 1, p. 793; Laws 1967, c. 289, § 1, p. 788; Laws 1969, c. 391, § 1, p. 1373; Laws 1973, LB 150, § 1; Laws 1973, LB 239, § 2; Laws 1973, LB 25, § 1; Laws 1975, LB 186, § 1; Laws 1976, LB 782, § 14; Laws 1977, LB 199, § 1; Laws 1981, LB 20, § 1; Laws 1983, LB 185, § 1; Laws 1984, LB 776, § 1; Laws 1986, LB 811, § 33; Laws 1986, LB 528, § 6; Laws 1987, LB 353, § 1; Laws 1993, LB 121, § 282; Laws 1994, LB 884, § 63; Laws 1996, LB 43, § 8; Laws 1997, LB 138, § 38; Laws 1997, LB 474, § 2; Laws 1998, LB 1010, § 1; Laws 1999, LB 216, § 1; Laws 2002, LB 417, § 2; Laws 2003, LB 332, § 1; Laws 2005, LB 238, § 1. Effective date September 4, 2005.

**48-115.01. Employee; extend coverage; when.** Sections 48-115, 48-115.01, and 48-146 shall be so construed as to effectuate their general purpose to extend workers' compensation coverage to additional employees and officers as soon as the same may be done under the Constitution of Nebraska.

**Source:** Laws 1967, c. 291, § 3, p. 796; Laws 1986, LB 811, § 34. Effective date July 17, 1986.

**48-126.01. Volunteer fire department; emergency management agency, organization, or team; military forces; law enforcement reserve force; volunteer emergency medical service; members; wages; basis of computation.** In determining the compensation to be paid any member of the military forces of this state, any member of a law enforcement reserve force, any member of a volunteer fire department in any rural or suburban fire protection district, city, village, or nonprofit corporation, any member of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, or any member of a volunteer emergency medical service, which military forces, law enforcement reserve force, fire department, emergency management agency, organization, or team, or volunteer emergency medical service is organized under the laws of the State of Nebraska, or any person fulfilling conditions of probation, or community service as defined in section 29-2277, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277, for injuries resulting in disability or death received in the performance of his or her duties as a member of such military forces, reserve force, department, agency, organization, team, or service, or pursuant to an order of any court, the wages of such a member or person shall be taken to be those received by him or her from his or her regular employer, and he or she shall receive such proportion thereof as he or she is entitled to under the provisions of section 48-121.

If such member or person is not regularly employed by some other person, for the purpose of such determination, it shall be deemed and assumed that he or she is receiving income from his or her business or from other employment equivalent to wages in an amount one and one-half times the maximum compensation rate for total disability.

If the wages received for the performance of duties as a member of such military forces, reserve force, department, agency, organization, team, or service exceed the wages received from a regular employer, such member shall be entitled to a rate of compensation based upon wages received as a member of such military forces, reserve force, department, agency, organization, team, or service.

**Source:** Laws 1913, c. 198, § 26, p. 592; R.S.1913, § 3667; Laws 1917, c. 85, § 10, p. 208; C.S.1922, § 3049; Laws 1927, c. 39, § 2, p. 171; C.S.1929, § 48-126; Laws 1935, c. 57, § 39, p. 208; C.S. Supp.,1941, § 48-126; R.S.1943, § 48-126; Laws 1953, c. 163, § 1(2), p. 513; Laws 1955, c. 186, § 3, p. 532; Laws 1959, c. 224, § 1, p. 790; Laws 1961, c. 233, § 2, p. 691; Laws 1967, c. 289, § 2, p. 790; Laws 1969, c. 394, § 1, p. 1384; Laws 1973, LB 239, § 3; Laws 1973, LB 25, § 2; Laws 1976, LB 782, § 15; Laws 1986, LB 528, § 7; Laws 1996, LB 43, § 9; Laws 1997, LB 138, § 39; Laws 1999, LB 216, § 7.

**48-816. Preliminary proceedings; commission; powers; duties; collective bargaining; posttrial conference.**

- (1) After a petition has been filed under section 48-811, the clerk shall immediately notify the commission which shall promptly take such preliminary proceedings as may be necessary to ensure prompt hearing and speedy adjudication of the industrial dispute. The commission shall have power and authority upon its own initiative or upon request of a party to the dispute to make such temporary findings and orders as may be necessary to preserve and protect the status of the parties, property, and public interest involved pending final determination of the issues. In the event of an industrial dispute between an employer and an employee or a labor organization when such employer and employee or labor organization have failed or refused to bargain in good faith concerning the matters in dispute, the commission may order such bargaining to begin or resume, as the case may be, and may make any such order or orders as may be appropriate to govern the situation pending such bargaining. The commission shall require good faith bargaining concerning the terms and conditions of employment of its employees by any employer. Upon the request of either party, the commission shall require the parties to an industrial dispute to submit to mediation or factfinding. Upon the request of both parties, a special master may be appointed if the parties are within the provisions of section 48-811.02. The commission shall appoint mediators, factfinders, or special masters for such purpose. Such orders for bargaining, mediation, factfinding, or a special master proceeding may be issued at any time during the pendency of an action to resolve an industrial dispute. To bargain in good faith shall mean the performance of the mutual obligation of the employer and the labor organization to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.
- (2) Except as provided in the State Employees Collective Bargaining Act, public employers are hereby authorized to recognize employee organizations for the purpose of negotiating collectively in the determination of and administration of grievances arising under the terms and conditions of employment of their public employees as provided in the Industrial Relations Act and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment.

- (3) (a) Except as provided in subdivisions (b) and (c) of this subsection, a supervisor shall not be included in a single bargaining unit with any other employee who is not a supervisor.
- (b) All firefighters and police officers employed in the fire department or police department of any municipal corporation in a position or classification subordinate to the chief of the department and his or her immediate assistant or assistants holding authority subordinate only to the chief shall be presumed to have a community of interest and may be included in a single bargaining unit represented by an employee organization for the purposes of the Industrial Relations Act. Public employers shall be required to recognize an employees bargaining unit composed of firefighters and police officers holding positions or classifications subordinate to the chief of the fire department or police department and his or her immediate assistant or assistants holding authority subordinate only to the chief when such bargaining unit is designated or elected by employees in the unit.
- (c) All administrators employed by a Class V school district shall be presumed to have a community of interest and may join a single bargaining unit composed otherwise of teachers and other certificated employees for purposes of the Industrial Relations Act, except that the following administrators shall be exempt: The superintendent, associate superintendent, assistant superintendent, secretary and assistant secretary of the board of education, executive director, administrators in charge of the offices of state and federal relations and research, chief negotiator, and administrators in the immediate office of the superintendent. A Class V school district shall recognize an employees bargaining unit composed of teachers and other certificated employees and administrators, except the exempt administrators, when such bargaining unit is formed by the employees as provided in section 48-838 and may recognize such a bargaining unit as provided in subsection (2) of this section. In addition, all administrators employed by a Class V school district, except the exempt administrators, may form a separate bargaining unit represented either by the same bargaining agent for all collective-bargaining purposes as the teachers and other certificated employees or by another collective-bargaining agent of such administrators' choice. If a separate bargaining unit is formed by election as provided in section 48-838, a Class V school district shall recognize the bargaining unit and its agent for all purposes of collective bargaining. Such separate bargaining unit may also be recognized by a Class V school district as provided in subsection (2) of this section.
- (4) When an employee organization has been certified as an exclusive collective-bargaining agent or recognized pursuant to any other provisions of the Industrial Relations Act, the appropriate public employer shall be and is hereby authorized to negotiate collectively with such employee organization in the settlement of grievances arising under the terms and conditions of employment of the public employees as provided in such act and to negotiate and enter into written agreements with such employee organizations in determining such terms and conditions of employment, including wages and hours.
- (5) Upon receipt by an employer of a request from a labor organization to bargain on behalf of employees, the duty to engage in good faith bargaining shall arise if the labor organization has been certified by the commission or recognized by the employer as the exclusive bargaining representative for the employees in that bargaining unit.
- (6) A party to an action filed with the commission may request the commission to send survey forms or data request forms. The requesting party shall prepare its own survey forms or data request forms and shall provide the commission the names and addresses of the entities to whom the documents shall be sent, not to exceed twenty addresses in any case. All costs resulting directly from the reproduction of such survey or data request forms and the cost of mailing such forms shall be taxed by the commission to the requesting party. The commission shall have the authority
- (a) to make studies and analyses of and act as a clearinghouse of information relating to conditions of employment of public employees throughout the state,
- (b) to request from any government, and such governments are authorized to provide, such assistance, services, and data as will enable it properly to carry out its functions and powers,
- (c) to conduct studies of problems involved in representation and negotiation, including, but not limited to, those subjects which are for determination solely by the appropriate legislative body, and make recommendations from time to time for legislation based upon the results of such studies,
- (d) to make available to employee organizations, governments, mediators, factfinding boards and joint study committees established by governments, and employee organizations statistical data relating to wages, benefits, and employment practices in public and private employment



- applicable to various localities and occupations to assist them to resolve complex issues in negotiations, and
- (e) to establish, after consulting representatives of employee organizations and administrators of public services, panels of qualified persons broadly representative of the public to be available to serve as mediators, special masters, or members of factfinding boards.
- (7) (a) Except for those cases arising under section 48-818, the commission shall be required to make findings of facts in all cases in which one of the parties to the dispute requests findings. Such request shall be specific as to the issues on which the party wishes the commission to make findings of fact.
- (b) In cases arising under section 48-818, findings of fact shall not be required of the commission unless both parties to the dispute stipulate to the request and to the specific issues on which findings of fact are to be made.
  - (c) If findings of fact are requested under subdivision (a) or (b) of this subsection, the commission may require the parties making the request to submit proposed findings of fact to the commission on the issues on which findings of facts are requested.
  - (d) In cases arising under section 48-818, the commission shall issue a recommended decision and order, which decision and order shall become final within ten days of entry unless either party to the dispute files with the commission a request for a posttrial conference. If such a request is filed, the commission shall hold a posttrial conference within ten days of receipt of such request and shall issue an order within ten days after holding such posttrial conference, which order shall become the final order in the case. The purpose of such posttrial conference shall be to allow the commission to hear from the parties on those portions of the recommended decision and order which is not based upon or which mischaracterizes evidence in the record and to allow the commission to correct any such errors after having heard the matter in a conference setting in which all parties are represented.

**Source:** Laws 1947, c. 178, § 16, p. 591; Laws 1967, c. 303, § 2, p. 825; Laws 1969, c. 407, § 5, p. 1408; Laws 1972, LB 1402, § 1; Laws 1972, LB 1228, § 3; Laws 1979, LB 444, § 5; Laws 1984, LB 832, § 2; Laws 1985, LB 213, § 2; Laws 1986, LB 809, § 5; Laws 1987, LB 524, § 2; Laws 1987, LB 661, § 26; Laws 1988, LB 519, § 1; Laws 1988, LB 684, § 1; Laws 1988, LB 942, § 1; Laws 1995, LB 365, § 2.

**48-1209.01. Police; firefighters; cities having a population of more than 10,000 inhabitants; minimum salaries.** The officers and members of the police and paid fire departments of cities of the metropolitan and primary classes and of cities of the first class having a population of more than ten thousand inhabitants shall each receive a salary of not less than three hundred fifty dollars per month. The city council may, by ordinance, at any time, change, fix or revise the salaries of the officers or members of the police and fire departments of such cities, but in no instance shall the minimum salary of any officer or member be less than three hundred fifty dollars per month.

**Source:** Laws 1965, c. 78, § 1, p. 313; Laws 1979, LB 80, § 63; R.S.1943, (1983), § 19-1824.  
Effective date September 6, 1985.

**53-119.01. Fire safety inspection; fee.** The commission may request the State Fire Marshal to inspect for fire safety pursuant to section 81-502 any premises for which an annually renewable retail license, or renewal of such a license, is sought. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 which shall be payable by the licensee or applicant for a license. The authority to make such investigations may be delegated to qualified local fire prevention personnel pursuant to section 81-502.

**Source:** Laws 1983, LB 498, § 1; Laws 2004, LB 485, § 7

**60-335. Transferred to 60-3,160**

**60-3,135. Undercover license plates; issuance; confidential.**

- (1) (a) Undercover license plates may be issued to state, county, city, or village law enforcement agencies and shall be used only for legitimate criminal investigatory purposes. Undercover license plates may also be issued to the Nebraska State Patrol, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, persons employed by the Tax Commissioner for state revenue enforcement purposes, the Department of Health and Human Services for the purposes of communicable disease control or for the prevention and control of those communicable diseases which endanger the public health, the Department of Health and Human Services Regulation and Licensure in the enforcement of drug control laws or for other investigation purposes, the Department of Agriculture for special investigative purposes, and the Insurance Fraud Prevention Division of the Department of Insurance for investigative purposes. Undercover license plates shall not be used on personally owned vehicles or for personal use of government-owned vehicles.
- (b) The director shall prescribe a form for agencies to apply for undercover license plates. The form shall include a space for the name and signature of the contact person for the requesting agency, a statement that the undercover license plates are to be used only for legitimate criminal investigatory purposes, and a statement that undercover license plates are not to be used on personally owned vehicles or for personal use of government-owned vehicles.
- (2) The agency shall include the name and signature of the contact person for the agency on the form and pay the fee prescribed in section 60-3,102. If the undercover license plates will be used for the investigation of a specific event rather than for ongoing investigations, the agency shall designate on the form an estimate of the length of time the undercover license plates will be needed. The contact person in the agency shall sign the form and verify the information contained in the form.
- (3) Upon receipt of a completed form, the director shall determine whether the undercover license plates will be used by an approved agency for a legitimate purpose pursuant to subsection (1) of this section. If the director determines that the undercover license plates will be used for such a purpose, he or she may issue the undercover license plates in the form and under the conditions he or she determines to be necessary. The decision of the director regarding issuance of undercover license plates is final.
- (4) The department shall keep records pertaining to undercover license plates confidential, and such records shall not be subject to public disclosure.
- (5) The contact person shall return the undercover license plates to the department if:
  - (a) The undercover license plates expire and are not renewed;
  - (b) The purpose for which the undercover license plates were issued has been completed or terminated; or
  - (c) The director requests their return.
- (6) A state agency, board, or commission that uses motor vehicles from the transportation services bureau of the Department of Administrative Services shall notify the bureau immediately after undercover license plates have been assigned to the motor vehicle and shall provide the equipment and license plate number and the undercover license plate number to the bureau. The transportation services bureau shall maintain a list of state-owned motor vehicles which have been assigned undercover license plates. The list shall be confidential and not be subject to public disclosure.
- (7) The contact person shall be held accountable to keep proper records of the number of undercover plates possessed by the agency, the particular license plate numbers for each motor vehicle, and the person who is assigned to the motor vehicle. This record shall be confidential and not be subject to public disclosure.

**Source:** Laws 2005, LB 274, § 135; Effective date September 4, 2005.

**60-3,160. Governmental vehicle; exempt from fee.** No registration fee shall be charged for any motor vehicle or trailer owned or leased and used by any city or village of this state, any rural fire protection district, the Civil Air Patrol, any public school district, any county, the state, the United States Government, any entity formed pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, or any municipal public body or authority used in operating a public passenger transportation system.

**Source:** Laws 2005, LB 274, § 160. Effective date September 4, 2005.

**Cross References:** Interlocal Cooperation Act, see section 13-801. Integrated Solid Waste Management Act, see section 13-2001. Joint Public Agency Act, see section 13-2501.

**60-6,114. Authorized emergency vehicles; privileges; conditions.**

- (1) Subject to the conditions stated in the Nebraska Rules of the Road, the driver of an authorized emergency vehicle, when responding to an emergency call, when pursuing an actual or suspected violator of the law, or when responding to but not when returning from a fire alarm, may:
  - (a) Stop, park, or stand, irrespective of the provisions of the rules, and disregard regulations governing direction of movement or turning in specified directions; and
  - (b) Except for wreckers towing disabled vehicles and highway maintenance vehicles and equipment:
    - (i) Proceed past a steady red indication, a flashing red indication, or a stop sign but only after slowing down as may be necessary for safe operation; and
    - (ii) Exceed the maximum speed limits so long as he or she does not endanger life, limb, or property.
- (2) Except when operated as a police vehicle, the exemptions granted in subsection (1) of this section shall apply only when the driver of such vehicle, while in motion, sounds an audible signal by bell, siren, or exhaust whistle as may be reasonably necessary and when such vehicle is equipped with at least one lighted light displaying a red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle.
- (3) The exemptions granted in subsection (1) of this section shall not relieve the driver from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect such driver from the consequences of his or her reckless disregard for the safety of others.
- (4) Authorized emergency vehicles operated by police and fire departments shall not be subject to the size and weight limitations of sections 60-6,288 to 60-6,290 and 60-6,294.

**Source:** Laws 1973, LB 45, § 8; R.S.1943, (1988), § 39-608; Laws 1993, LB 370, § 210; Laws 2005, LB 82, § 2.

**60-6,138. One-way roadways and rotary traffic islands; jurisdiction; exception for emergency vehicles.**

- (1) The Department of Roads and local authorities with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all times or at such times as shall be indicated by traffic control devices.
- (2) Except for emergency vehicles, no vehicle shall be operated, backed, pushed, or otherwise caused to move in a direction which is opposite to the direction designated by competent authority on any deceleration lane, acceleration lane, access ramp, shoulder, or roadway.
- (3) A vehicle which passes around a rotary traffic island shall be driven only to the right of such island.

**Source:** Laws 1973, LB 45, § 27; R.S.1943, (1988), § 39-627; Laws 1993, LB 370, § 234.

**60-6,164. Stopping, parking, or standing upon a roadway, freeway, or bridge; limitations.**

- (1) No person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon a roadway outside of a business or residential district when it is practicable to stop, park, or leave such vehicle off such part of a highway, but in any event an unobstructed width of the roadway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred feet in each direction upon such highway. Such parking, stopping, or standing shall in no event exceed twenty-four hours.
- (2) No person shall stop, park, or leave standing any vehicle on a freeway except in areas designated or unless so directed by a peace officer, except that when a vehicle is disabled or inoperable or the driver of the vehicle is ill or incapacitated, such vehicle shall be permitted to park, stop, or stand on the shoulder facing in the direction of travel with all wheels and projecting parts of such vehicle completely clear of the traveled lanes, but in no event shall such parking, standing, or stopping upon the shoulder of a freeway exceed twelve hours.
- (3) No person, except law enforcement, fire department, emergency management, public or private

ambulance, or authorized Department of Roads or local authority personnel, shall loiter or stand or park any vehicle upon any bridge, highway, or structure which is located above or below or crosses over or under the roadway of any highway or approach or exit road thereto.

- (4) This section shall not apply to the driver of any vehicle which is disabled while on the roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

**Source:** Laws 1973, LB 45, § 70; R.S.1943, (1988), § 39-670; Laws 1993, LB 370, § 260; Laws 1996, LB 43, § 11.

**60-6,166. Stopping, standing, or parking prohibited; exceptions.**

- (1) Except when necessary to avoid conflict with other traffic or when in compliance with law or the directions of a peace officer or traffic control device, no person shall:
- (a) Stop, stand, or park any vehicle:
    - (i) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
    - (ii) On a sidewalk;
    - (iii) Within an intersection;
    - (iv) On a crosswalk;
    - (v) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone unless the Department of Roads or the local authority indicates a different length by signs or markings;
    - (vi) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic;
    - (vii) Upon any bridge or other elevated structure over a highway or within a highway tunnel;
    - (8) On any railroad track; or
    - (ix) At any place where official signs prohibit stopping;
  - (b) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:
    - (i) In front of a public or private driveway;
    - (ii) Within fifteen feet of a fire hydrant;
    - (iii) Within twenty feet of a crosswalk at an intersection;
    - (iv) Within thirty feet of any flashing signal, stop sign, yield sign, or other traffic control device located at the side of a roadway;
    - (v) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of such entrance when properly signposted; or
    - (vi) At any place where official signs prohibit standing; or
  - (c) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers:
    - (i) Within fifty feet of the nearest rail of a railroad crossing; or
    - (ii) At any place where official signs prohibit parking.
- (2) No person shall move a vehicle not lawfully under his or her control into any such prohibited area or away from a curb such a distance as shall be unlawful.

**Source:** Laws 1973, LB 45, § 72; R.S.1943, (1988), § 39-672; Laws 1993, LB 370, § 262.  
Operative date January 1, 1994.

**60-6,183. Following fire apparatus in response to an alarm; prohibited.** The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

**Source:** Laws 1973, LB 45, § 81; R.S.1943, (1988), § 39-681; Laws 1993, LB 370, § 279.  
Operative date January 1, 1994.

**60-6,184. Restrictions on driving over unprotected fire hose.** No vehicle shall be driven over unprotected hose of a fire department when laid down on any highway or private road or driveway, in use or to be used at any fire or alarm of fire, without the consent of the fire department official in command.

**Source:** Laws 1973, LB 45, § 82; R.S.1943, (1988), § 39-682; Laws 1993, LB 370, § 280.  
Operative date January 1, 1994.

**60-6,231. Flashing or rotating lights; emergency vehicles; colors permitted.** A flashing or rotating red light or red and white light shall be displayed on any emergency vehicle whenever operated in this state. A blue light may also be displayed with such flashing or rotating red light or red and white light. For purposes of this section, any publicly owned police, fire, or rescue vehicles and publicly or privately owned ambulances and funeral escort vehicles shall be considered to be emergency vehicles.

**Source:** Laws 1969, c. 327, § 3, p. 1171; C.S.Supp.,1972, § 39-788.02; Laws 1989, LB 416, § 1; R.S.Supp.,1992, § 39-6,149; Laws 1993, LB 370, § 327

**60-6,233. Rotating or flashing red light or red and blue lights; when permitted; application; permit; expiration.**

- (7)
  - (a) A rotating or flashing red light or lights or such light or lights in combination with a blue light or lights may be displayed on any motor vehicle operated by any volunteer firefighter or peace officer anywhere in this state while actually enroute to the scene of a fire or other emergency requiring his or her services as a volunteer firefighter or peace officer but only after its use has been authorized in writing by the county sheriff.
  - (b) Application for a permit to display such light shall be made in writing to the sheriff on forms to be prescribed and furnished by the Superintendent of Law Enforcement and Public Safety. The application shall be accompanied by a statement that the applicant is a volunteer firefighter or peace officer and is requesting issuance of the permit. The statement shall be signed by the applicant's superior.
  - (c) The permit shall be carried at all times in the vehicle named in the permit. Each such permit shall expire on December 31 of each year and shall be renewed in the same manner as it was originally issued.
  - (d) The sheriff may at any time revoke such permit upon a showing of abuse thereof or upon receipt of notice from the applicant's superior that the holder thereof is no longer an active volunteer firefighter or peace officer. Any person whose permit has been so revoked shall upon demand surrender it to the sheriff or his or her authorized agent.
- (2) A rotating or flashing red light or lights or such light or lights in combination with a blue light or lights may be displayed on any motor vehicle being used by rescue squads actually enroute to, at, or returning from any emergency requiring their services, or by any privately owned wrecker when engaged in emergency services at the scene of an accident, or at a disabled vehicle, located outside the city limits of a city of the metropolitan or primary class, but only after its use has been authorized in writing by the county sheriff. Applications shall be made and may be revoked in the same manner as for volunteer firefighters as provided in subsection (1) of this section.

**Source:** Laws 1969, c. 327, § 5, p. 1171; Laws 1971, LB 365, § 2; C.S. Supp.,1972, § 39-788.04; Laws 1981, LB 64, § 2; Laws 1989, LB 416, § 2; R.S. Supp.,1992, § 39-6,151; Laws 1993, LB 370, § 329. Operative date January 1, 1994.

**60-6,234. Rotating or flashing lights; violation; penalty.** Any person who violates any provision of sections 60-6,230 to 60-6,233 shall be guilty of a Class III misdemeanor and shall also be ordered to remove from any vehicle or equipment any light found to be in violation of such sections.

**Source:** Laws 1969, c. 327, § 6, p. 1172; R.S.Supp.,1972, § 39-788.05; Laws 1977, LB 41, § 23; R.S.1943, (1988), § 39-6,152; Laws 1993, LB 370, § 330

**60-6,285. Horn; requirements; prohibited acts.** Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet. Except as otherwise provided in this section, it shall be unlawful for any vehicle to be equipped with or for any person to use upon a vehicle any siren, exhaust, compression, or spark plug whistle or for any person at any time to use a horn, otherwise than as a reasonable warning, or to make any unnecessary or unreasonably loud or harsh sound by means of a horn or other warning device. Every police and fire department and fire patrol vehicle and every ambulance used for emergency calls shall be equipped with a bell, siren, or exhaust whistle.

**Source:** Laws 1931, c. 110, § 39, p. 318; C.S. Supp.,1941, § 39-1170; R.S.1943, § 39-774; Laws 1957, c. 366, § 5, p. 1248; R.R.S.1943, § 39-774; Laws 1987, LB 224, § 5; R.S.1943, (1988), § 39-6,135; Laws 1993, LB 370, § 381. Operative date January 1, 1994.

**66-101.** Repealed. Laws 1990, LB 856, s. 7.

**66-102.** Repealed. Laws 1990, LB 856, s. 7.

**66-103. Gasoline and other explosives; sale; containers or portable tanks; type required.**

Every person within this state retailing gasoline, benzene, and other similar types of high explosives in less than carload lots shall deliver the same to the purchaser only in containers or portable tanks painted vermilion red and having the word gasoline, benzene, or whatever name such explosive is known by plainly printed on it in English. All such words shall be in letters sufficiently large to attract attention.

**Source:** Laws 1907, c. 86, § 1, p. 305; R.S.1913, § 5754; C.S.1922, § 5099; C.S.1929, § 66-103; R.S.1943, § 66-103; Laws 1985, LB 441, § 1. Effective date September 6, 1985.

**66-103.01. Containers or portable tanks, defined.** For the purposes of sections 66-103 to 66-106, containers or portable tanks shall mean containers or portable tanks which conform to standards which the State Fire Marshal shall adopt and promulgate by rules and regulations. The State Fire Marshal may adopt the standards, or any part of such standards, recommended for containers or portable tanks by the National Fire Protection Association.

**Source:** Laws 1985, LB 441, § 2. Effective date September 6, 1985.

**66-104. Gasoline and other explosives; purchase; containers or portable tanks; type required.** Every person within this state purchasing gasoline or other high explosives of that nature for his or her own use shall procure and keep the same only in containers or portable tanks painted and stamped as required by section 66-103. This section and section 66-103 shall not affect sales, purchase, or the keeping for use of such explosives if the quantity is one quart or less.

**Source:** Laws 1907, c. 86, § 3, p. 305; R.S.1913, § 5756; C.S.1922, § 5101; C.S.1929, § 66-105; R.S.1943, § 66-104; Laws 1985, LB 441, § 3. Effective date September 6, 1985.

**66-105. Kerosene; delivery; container or portable tank prohibited.** No person shall deliver kerosene, or what is known as coal oil, in any container or portable tank painted or stamped as provided by section 66-103.

**Source:** Laws 1907, c. 86, § 2, p. 305; R.S.1913, § 5755; C.S.1922, § 5100; C.S.1929, § 66-104; R.S.1943, § 66-105; Laws 1985, LB 441, § 4. Effective date September 6, 1985.

**66-106. Kerosene; use or storage; container or portable tank prohibited.** No person keeping for use or using kerosene, otherwise known as coal oil, shall put or keep the same in any container or portable tank painted or stamped as provided by section 66-103.

**Source:** Laws 1907, c. 86, § 4, p. 305; R.S.1913, § 5757; C.S.1922, § 5102; C.S.1929, § 66-106; R.S.1943, § 66-106; Laws 1985, LB 441, § 5. Effective date September 6, 1985.

**66-107. Violation; penalty.** Any person violating any of the provisions of sections 66-103 to 66-106 shall upon conviction be guilty of a Class III misdemeanor.

**Source:** Laws 1907, c. 86, § 5, p. 305; R.S.1913, § 5758; C.S.1922, § 5103; C.S.1929, § 66-107; R.S.1943, § 66-107; Laws 1977, LB 39, § 110.

**66-1519. Petroleum Release Remedial Action Cash Fund; created; use; investment.**

- (1) There is hereby created the Petroleum Release Remedial Action Cash Fund to be administered by the department. Revenue from the following sources shall be remitted to the State Treasurer for credit to the fund:
  - (a) The fees imposed by sections 66-1520 and 66-1521;
  - (b) Money paid under an agreement, stipulation, cost-recovery award under section 66-1529.02, or settlement; and
  - (c) Money received by the department in the form of gifts, grants, reimbursements, property liquidations, or appropriations from any source intended to be used for the purposes of the fund.
- (2) Money in the fund may be spent for:
  - (a) Reimbursement for the costs of remedial action by a responsible person or his or her designated representative and costs of remedial action undertaken by the department in response to a release first reported after July 17, 1983, and on or before June 30, 2009, including reimbursement for damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred;
  - (b) payment of any amount due from a third-party claim;
  - (c) fee collection expenses incurred by the State Fire Marshal;

- (d) direct expenses incurred by the department in carrying out the Petroleum Release Remedial Action Act;
  - (e) other costs related to fixtures and tangible personal property as provided in section 66-1529.01;
  - (f) interest payments as allowed by section 66-1524;
  - (g) expenses incurred by the technical advisory committee created in section 81-15,189 in carrying out its duties pursuant to section 81-15,190;
  - (h) claims approved by the State Claims Board authorized under section 66-1531;
  - (i) a grant to a city of the metropolitan class in the amount of three hundred thousand dollars, provided no later than September 15, 2005, to carry out the federal Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 et seq., as such act existed on October 1, 2003; and
  - (j) methyl tertiary butyl ether testing, to be conducted randomly at terminals within the state for up to two years ending June 30, 2003. The amount expended on the testing shall not exceed forty thousand dollars. The testing shall be conducted by the Department of Agriculture. The department may enter into contractual arrangements for such purpose. The results of the tests shall be made available to the Department of Environmental Quality.
- (3) Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the General Fund at the direction of the Legislature. Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the Water Policy Task Force Cash Fund at the direction of the Legislature. The State Treasurer shall transfer one million five hundred thousand dollars from the Petroleum Release Remedial Action Cash Fund to the Ethanol Production Incentive Cash Fund on July 1 of each of the following years: 2004 through 2011.
- (4) Any money in the Petroleum Release Remedial Action Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1989, LB 289, § 19; Laws 1991, LB 409, § 12; Laws 1993, LB 237, § 1; Laws 1994, LB 1066, § 57; Laws 1996, LB 1226, § 7; Laws 1998, LB 1161, § 28; Laws 1999, LB 270, § 2; Laws 2001, LB 461, § 3; Laws 2002, LB 1003, § 41; Laws 2002, LB 1310, § 7; Laws 2003, LB 367, § 2; Laws 2004, LB 962, § 105; Laws 2004, LB 1065, § 9; Laws 2005, LB 40, § 4

**Cross References:** Nebraska Capital Expansion Act, see section 72-1269. Nebraska State Funds Investment Act, see section 72-1260.

**66-1519.01. Petroleum Release Remedial Action Cash Fund; transfer to Wastewater Treatment Facilities Construction Loan Fund; authorized; repayment; contracts authorized.**

- (1) Prior to December 31, 1996, the department may authorize the State Treasurer to transfer funds from the Petroleum Release Remedial Action Cash Fund to the Wastewater Treatment Facilities Construction Loan Fund in such amount as determined by the department to be necessary to satisfy the state match requirement necessary to obtain federal capitalization grants under the federal Clean Water Act, as defined in section 81-15,149. The department may enter into contracts for repayment of such amounts, plus any additional amounts, including interest, determined by the department to be reasonable and necessary with respect to such transfers. Such contracts may allow repayments to be completed on or after December 31, 1996.
- (2) Prior to December 31, 1996, the department may authorize the State Treasurer to deposit amounts received from the Wastewater Treatment Facilities Construction Loan Fund, including amounts due from federal capitalization grants for the benefit of the Wastewater Treatment Facilities Construction Loan Fund, in the Petroleum Release Remedial Action Cash Fund. The department may authorize the State Treasurer to repay such amounts, plus any additional amounts, including interest, determined by the department to be reasonable and necessary with respect to such deposits, and the department may enter into contracts with respect thereto for the benefit of the Wastewater Treatment Facilities Construction Loan Fund. The terms of any such contracts or authorizations may end on or after December 31, 1996.
- (3) The department may agree, in the contracts authorized under subsection (2) of this section, that specific amounts or sources of money in the Petroleum Release Remedial Action Cash Fund shall be obligated or pledged to the repayment of deposits from the Wastewater Treatment Facilities Construction Loan Fund, and that some or all of such specified amounts shall not be available to provide reimbursement pursuant to section 66-1523 or payments pursuant to section 66-1529.01 or 66-1529.02. Such specified amounts shall not exceed the amounts the department deems reasonably necessary to provide adequate security for the repayment of deposits. Any such pledge shall be valid and binding from the time the pledge is

made, the amounts or sources of money so pledged shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, the lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise, regardless of whether the parties have notice thereof, and no such pledge agreement need be recorded.

**Source:** Laws 1996, LB 1226, § 2; Laws 1998, LB 1161, § 29.

**66-1520 Owner of registered tank; petroleum release remedial action fee; amount.**

- (1) On each January 1, all owners of operating tanks registered in accordance with section 81-15,121 shall pay a petroleum release remedial action fee of ninety dollars to the State Fire Marshal for each registered tank.
- (2) The State Fire Marshal shall remit the fees received pursuant to this section to the State Treasurer for credit to the fund.

**Source:** Laws 1989, LB 289, § 20; Laws 1991, LB 409, § 13; Laws 1998, LB 1161, § 30.

**66-1525. Reimbursement; application; procedure; State Fire Marshal; duties; reduction of reimbursement; notification required.**

- (1) Any responsible person or his or her designated representative who has taken remedial action in response to a release first reported after July 17, 1983, and on or before June 30, 2009, or against whom there is a third-party claim may apply to the department under the rules and regulations adopted and promulgated pursuant to section 66-1518 for reimbursement for the costs of the remedial action or third-party claim. Partial payment of such reimbursement to the responsible person may be authorized by the department at the approved stages prior to the completion of remedial action when a remedial action plan has been approved. If any stage is projected to take more than ninety days to complete partial payments may be requested every sixty days. Such partial payment may include the eligible and reasonable costs of such plan or pilot projects conducted during the remedial action.
- (2) No reimbursement may be made unless the department makes the following eligibility determinations:
  - (a) The tank was in substantial compliance with any rules and regulations of the United States Environmental Protection Agency, the State Fire Marshal, and the department which were applicable to the tank. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the rules and regulations may have had on the tank thereby causing or contributing to the release and the extent of the remedial action thereby required;
  - (b) Either the State Fire Marshal or the department was given notice of the release in substantial compliance with the rules and regulations adopted and promulgated pursuant to the Environmental Protection Act and the Petroleum Products and Hazardous Substances Storage and Handling Act. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the notice provisions of the rules and regulations may have had on the remedial action being taken in a prompt, effective, and efficient manner;
  - (c) The responsible person reasonably cooperated with the department and the State Fire Marshal in responding to the release;
  - (d) The department has approved the plan submitted by the responsible person for the remedial action in accordance with rules and regulations adopted and promulgated by the department pursuant to the Environmental Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act or that portion of the plan for which payment or reimbursement is requested. However, responsible persons may undertake remedial action prior to approval of a plan by the department or during the time that remedial action at a site was suspended at any time after April 1995 because the fund was insufficient to pay reimbursements and be eligible for reimbursement at a later time if the responsible person complies with procedures provided to the responsible party by the department or set out in rules and regulations adopted and promulgated by the Environmental Quality Council;
  - (e) The costs for the remedial action were actually incurred by the responsible person or his or her designated representative after May 27, 1989, and were eligible and reasonable;
  - (f) If reimbursement for a third-party claim is involved, the cause of action for the third-party claim accrued after April 26, 1991, and the Attorney General was notified by any person of the service of summons for the action within ten days of such service; and
  - (g) The responsible person or his or her designated representative has paid the amount specified in subsection (1) or (2) of section 66-1523.



- (3) The State Fire Marshal shall review each application prior to consideration by the department and provide to the department any information the State Fire Marshal deems relevant to subdivisions (2)(a) through (g) of this section. The State Fire Marshal shall issue a determination with respect to an applicant's compliance with rules and regulations adopted and promulgated by the State Fire Marshal. The State Fire Marshal shall issue a compliance determination to the department within thirty days after receiving an application from the department.
- (4) The department may withhold taking action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.
- (5) Reimbursements made for a remedial action may be reduced as much as one hundred percent for failure by the responsible person to comply with applicable statutory or regulatory requirements. In determining the amount of the reimbursement reduction, the department shall consider:
  - (a) The extent of and reasons for noncompliance;
  - (b) The likely environmental impact of the noncompliance; and
  - (c) Whether noncompliance was negligent, knowing, or willful.
- (6) Except as provided in subsection (4) of this section, the department shall notify the responsible person of its approval or denial of the remedial action plan within one hundred twenty days after receipt of a remedial action plan which contains all the required information. If after one hundred twenty days the department fails to either deny, approve, or amend the remedial action plan submitted, the proposed plan shall be deemed approved. If the remedial action plan is denied, the department shall provide the reasons for such denial.

**Source:** Laws 1989, LB 289, § 25; Laws 1991, LB 409, § 17; Laws 1993, LB 237, § 3; Laws 1994, LB 1349, § 10; Laws 1996, LB 1226, § 11; Laws 1998, LB 1161, § 33; Laws 1999, LB 270, § 4; Laws 2001, LB 461, § 5; Laws 2004, LB 962, § 107

**Cross References:** Environmental Protection Act, see section 81-1532. Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.

**71-1903. Foster care; investigation by department; State Fire Marshal; fee; criminal history record information check.**

- (1) Before issuance of a license under sections 71-1901 to 71-1906.01, the department shall cause such investigation to be made as it deems necessary to determine if the character of the applicant, any member of the applicant's household, or the person in charge of the service and the place where the foster care is to be furnished are such as to ensure the proper care and treatment of children. The department may request the State Fire Marshal to inspect such places for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01, payable by the licensee or applicant for a license, except that the department may pay the fee for inspection for fire safety of foster family homes as defined in section 71-1902. The department may request the Department of Health and Human Services Regulation and Licensure to conduct sanitation and health standards investigations pursuant to subsection (2) of this section. The Department of Health and Human Services may also, at any time it sees fit, cause an inspection to be made of the place where any licensee is furnishing foster care to see that such service is being properly conducted.
- (2) The Department of Health and Human Services Regulation and Licensure shall make an investigation and report to the Department of Health and Human Services, within thirty days after receipt of the request from the Department of Health and Human Services, of all facilities and programs of licensed providers of foster care programs subject to this section or applicants for licenses to provide such programs to determine if the place or places to be covered by such licenses meet standards of health and sanitation set by the Department of Health and Human Services for the care and protection of the child or children who may be placed in such facilities and programs. The Department of Health and Human Services Regulation and Licensure may delegate the investigation authority to qualified local environmental health personnel.
- (3) Before the foster care placement of any child in Nebraska by the Department of Health and Human Services on and after July 16, 2004, the department shall require a national criminal history record information check of the prospective foster parent of such child and each member of such prospective foster parent's household who is eighteen years of age or older. The department shall provide two sets of legible fingerprints for such persons to the Nebraska State Patrol for submission to the Federal Bureau of Investigation. The Nebraska State Patrol shall conduct a criminal history record information check of such persons and shall submit such fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information check shall include information from federal repositories of such information and repositories of such information in other states if

authorized by federal law. The Nebraska State Patrol shall issue a report of the results of such criminal history record information check to the department. The department shall pay a fee to the Nebraska State Patrol for conducting such check. Information received from the criminal history record information check required under this subsection shall be used solely for the purpose of evaluating and confirming information provided by such persons for providing foster care or for the finalization of an adoption. A child may be placed in foster care by the department prior to the completion of a criminal history record information check under this subsection in emergency situations as determined by the department.

**Source:** Laws 1943, c. 154, § 3, p. 564; R.S.1943, § 71-1903; Laws 1945, c. 171, § 3, p. 549; Laws 1961, c. 415, § 27, p. 1259; Laws 1967, c. 446, § 2, p. 1388; Laws 1983, LB 498, § 2; Laws 1985, LB 447, § 37; Laws 1987, LB 386, § 3; Laws 1988, LB 930, § 2; Laws 1991, LB 836, § 28; Laws 1995, LB 401, § 26; Laws 1995, LB 451, § 3; Laws 1996, LB 1044, § 584; Laws 1997, LB 307, § 172; Laws 1997, LB 622, § 101; Laws 2001, LB 209, § 21; Laws 2002, LB 93, § 9; Laws 2004, LB 1005, § 66

**71-1913. Fire and health inspections.**

- (1) The department may request the State Fire Marshal to inspect any program for fire safety pursuant to section 81-502. The State Fire Marshal shall immediately notify the department whenever he or she delegates authority for such inspections under such section.
  - (2) The department may investigate all facilities and programs of licensed providers of child care programs as defined in section 71-1910 or applicants for licenses to provide such programs to determine if the place or places to be covered by such licenses meet standards of sanitation and physical well-being set by the department for the care and protection of the child or children who may be placed in such facilities and programs. The department may delegate this authority to qualified local environmental health personnel.
- Source:** Laws 1984, LB 130, § 6; Laws 1991, LB 836, § 31; Laws 1995, LB 401, § 34; Laws 1996, LB 1044, § 589; Laws 1997, LB 307, § 177; Laws 1997, LB 622, § 102; Laws 1999, LB 594, § 53.

**71-2017.** Repealed. Laws 2000, LB 819, s. 162. Operative date January 1, 2001.

**71-2022.** Repealed. Laws 2000, LB 819, s. 162. Operative date January 1, 2001.

**71-4635. Fire safety inspection; fee.** The Department of Health and Human Services Regulation and Licensure may request the State Fire Marshal to inspect for fire safety any mobile home park for which a license or renewal of a license is sought, pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 and payable by the licensee or applicant for a license. The authority to make such investigations may be delegated to qualified local fire prevention personnel pursuant to section 81-502.

**Source:** Laws 1983, LB 498, § 4; Laws 1996, LB 1044, § 680. Operative date January 1, 1997.

## Nebraska Clean Indoor Air Act

**71-5701. Act, how cited.** Sections 71-5701 to 71-5713 may be cited as the Nebraska Clean Indoor Air Act.

**Source:** Laws 1979, LB 344, § 1.

**71-5702. Purpose of sections.** The purpose of sections 71-5701 to 71-5713 is to protect the public health, comfort, and environment by prohibiting smoking in public places and at public meetings except in designated smoking areas.

**Source:** Laws 1979, LB 344, § 2.

**71-5703. Definitions, where found.** For purposes of sections 71-5701 to 71-5713, unless the context otherwise requires, the definitions found in sections 71-5704 to 71-5706 shall be used.

**Source:** Laws 1979, LB 344, § 3.

**71-5704. Public place, defined.** Public place shall mean any enclosed, indoor area used by the general public or serving as a place of work, including, but not limited to, restaurants, retail stores, offices and other commercial establishments, public conveyances, educational facilities, hospitals, nursing homes, auditoriums, arenas, and meeting rooms, but excluding private, enclosed offices occupied exclusively by smokers even though such offices may be visited by nonsmokers.

**Source:** Laws 1979, LB 344, § 4.

**71-5705. Public meeting, defined.** Public meeting shall mean all meetings as defined in the Open Meetings Act.

**Source:** Laws 1979, LB 344, § 5; Laws 2004, LB 821, § 19; Effective date July 16, 2004.

**Cross References:** Open Meetings Act, see section 84-1407.

**71-5706. Smoking, defined.** Smoking shall mean carrying a lighted cigar, cigarette, pipe, or any other lighted smoking equipment.

**Source:** Laws 1979, LB 344, § 6.

**71-5707. Smoking; designated areas; exceptions.**

- (1) No person shall smoke in a public place or at a public meeting except in designated smoking areas. This subsection does not apply in cases in which an entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of such room or hall.
- (2) With respect to factories, warehouses, and similar places of work not usually frequented by the general public, the Department of Health and Human Services Regulation and Licensure shall, in consultation with the Department of Labor, establish rules to restrict or prohibit smoking in those places of work where the close proximity of workers or the inadequacy of ventilation causes smoke pollution detrimental to the health and comfort of nonsmoking employees.
- (3) No person shall smoke at a site where child care programs required to be licensed under section 71-1911 are provided. This subsection applies to a child care program located in the home of the provider only during times one or more client's children are present in any part of the home.
- (4) Smoking is prohibited in all vehicles owned or leased by the state and in all buildings, and the area within ten feet of any entrance of such buildings, which are owned, leased, or occupied by the state except as provided in subsections (5), (6), and (7) of this section.
- (5) The following buildings or areas within buildings in which persons reside or lodge may be exempt from this section: (a) Nebraska veterans homes established pursuant to section 80-315; (b) private residences; (c) facilities and institutions under the control of the Department of Health and Human Services; and (d) overnight lodging facilities and buildings managed by the Game and Parks Commission, but no more than twenty-five percent of the overnight lodging facilities at each park location shall permit smoking.
- (6) Designated smoking areas not to exceed fifty percent of the space used by the public may be established in state-owned buildings at the Nebraska State Fairgrounds that possess a Class C, I, or M license for the sale of alcoholic liquor for consumption on the premises under the Nebraska Liquor Control Act.
- (7) Smoking may be permitted in no more than forty percent of the residential housing rooms or units owned or leased on each campus under the control of the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges.

**Source:** Laws 1979, LB 344, § 7; Laws 1996, LB 1044, § 732; Laws 1999, LB 211, § 1; Laws 2000, LB

1115, § 85; Laws 2004, LB 1005, § 109 ;

**Cross References:** Nebraska Liquor Control Act, see section 53-101. Violation of section, penalty, see section 71-5712.

**71-5708. Smoking areas; designation; by whom; exception.** Smoking areas may be designated by proprietors or other persons in charge of public places, except in places in which smoking is prohibited by the State Fire Marshal or by other law, ordinance, or regulation.

Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas. If a public place consists of a single room, one side of the room shall be reserved and posted as a no smoking area. No public place other than a bar or restaurant having a serving area of less than twelve hundred square feet shall be designated as a smoking area in its entirety. If a bar or restaurant having a serving area of less than twelve hundred square feet is designated as a smoking area in its entirety, such designation shall be posted conspicuously on all entrances normally used by the public.

**Source:** Laws 1979, LB 344, § 8.

**71-5709. Proprietor; public place; duty to prevent smoking.** The proprietor or other person in charge of a public place shall make reasonable efforts to prevent smoking and minimize the presence of environmental tobacco smoke in all nonsmoking areas of such place by:

- (1) Posting appropriate signs;
- (2) Arranging seating to provide a nonsmoking area;
- (3) Asking smokers to refrain from smoking in the nonsmoking area; or
- (4) Any other appropriate means.

**Source:** Laws 1979, LB 344, § 9; Laws 2003, LB 45, § 1. Effective date August 31, 2003.

**71-5710. Department of Health and Human Services Regulation and Licensure; rules and regulations.** The Department of Health and Human Services Regulation and Licensure shall, not later than January 1, 1980, adopt and promulgate rules and regulations necessary and reasonable to implement the provisions of sections 71-5701 to 71-5713. The Department of Health and Human Services Regulation and Licensure shall consult with interested persons and professional organizations before promulgating such rules and regulations.

**Source:** Laws 1979, LB 344, § 10; Laws 1996, LB 1044, § 733. Operative date January 1, 1997.

**71-5711. Department of Health and Human Services Regulation and Licensure; waiver of requirements; when.** The Department of Health and Human Services Regulation and Licensure may, upon request, waive the provisions of sections 71-5701 to 71-5713 if it determines there are compelling reasons to do so and a waiver will not significantly affect the health and comfort of nonsmokers.

**Source:** Laws 1979, LB 344, § 11; Laws 1996, LB 1044, § 734. Operative date January 1, 1997.

**71-5712. Violation; penalty.** Any person who violates section 71-5707 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1979, LB 344, § 12.

**71-5713. Violation; action to enjoin; report.** The Department of Health and Human Services Regulation and Licensure or a local public health department as defined in section 71-1626 may institute an action in any court with jurisdiction to enjoin any violation of the Nebraska Clean Indoor Air Act. Any interested party may report possible violations of the act to such departments.

**Source:** Laws 1979, LB 344, § 13; Laws 1996, LB 1044, § 735; Laws 2003, LB 45, § 2. Effective date August 31, 2003.

## Public Building Standards

**72-1119.** Transferred to section 81-5,148.

**72-1120.** Transferred to section 81-5,149.

**72-1121.** Transferred to section 81-5,150.

**72-1122.** Transferred to section 81-5,147.

## One-Call Notification System Act

**76-2301. Act, how cited.** Sections 76-2301 to 76-2330 shall be known and may be cited as the One-Call Notification System Act.

**Source:** Laws 1994, LB 421, § 1; Laws 2002, LB 1105, § 494.

**76-2302. Legislative intent.**

- (1) It is the intent of the Legislature to establish a means by which excavators may notify operators of underground facilities in an excavation area so that operators have the opportunity to identify and locate the underground facilities prior to excavation and so that the excavators may then observe proper precautions to safeguard the underground facilities from damage.
- (2) It is the purpose of the One-Call Notification System Act to aid the public by preventing injury to persons and damage to property and the interruption of utility services resulting from accidents caused by damage to underground facilities.

**Source:** Laws 1994, LB 421, § 2. Operative date February 16, 1994.

**76-2303. Definitions, where found.** For purposes of the One-Call Notification System Act, the definitions found in sections 76-2304 to 76-2317 shall be used.

**Source:** Laws 1994, LB 421, § 3. Operative date February 16, 1994.

**76-2304. Business day, defined.** Business day shall mean any day other than a Saturday, Sunday, or state or nationally observed legal holiday.

**Source:** Laws 1994, LB 421, § 4. Operative date February 16, 1994.

**76-2305. Center, defined.** Center shall mean the statewide one-call notification center.

**Source:** Laws 1994, LB 421, § 5. Operative date February 16, 1994.

**76-2306. Damage, defined.** Damage shall mean any impact with, partial or complete severance, destruction, impairment, or penetration of, or removal or weakening of support from an underground facility, including its protective coating, housing, or other protective device.

**Source:** Laws 1994, LB 421, § 6. Operative date February 16, 1994.

**76-2307. Emergency condition, defined.** Emergency condition shall mean any condition which constitutes a clear and present danger to life, health, or property or which demands immediate action to prevent or repair a major service outage.

**Source:** Laws 1994, LB 421, § 7. Operative date February 16, 1994.

**76-2308. Excavation, defined.** Excavation shall mean any activity in which earth, rock, or other material in or on the ground is moved or otherwise displaced by means of tools, equipment, or explosives and shall include grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, and cable or pipe plowing or driving but shall not include:

- (1) normal maintenance of roads if the maintenance does not change the original road grade and does not involve the road ditch,
- (2) tilling of soil and gardening for seeding and other agricultural purposes,
- (3) digging of graves or in landfills in planned locations,
- (4) maintenance or rebuilding of railroad track or facilities located on a railroad right-of-way by the railroad company or its contractors when such maintenance or rebuilding does not change the track grade, or
- (5) hand digging around the base of a pole for pole inspection as part of routine maintenance or replacement of a pole when the replacement pole is similarly sized and is installed in the existing hole.

**Source:** Laws 1994, LB 421, § 8. Operative date February 16, 1994.

**76-2309. Excavator, defined.** Excavator shall mean a person who engages in excavation in this state.

**Source:** Laws 1994, LB 421, § 9. Operative date February 16, 1994.

**76-2310. Gas or hazardous liquid underground pipeline facility, defined.** Gas or hazardous liquid underground pipeline facility shall mean any underground facility used or intended for use in the transportation of gas or the treatment of gas or used or intended for use in the transportation of hazardous liquids including

petroleum or petroleum products.

**Source:** Laws 1994, LB 421, § 10. Operative date February 16, 1994.

**76-2311. Nonpermanent surface, defined.** Nonpermanent surface shall mean any ground consisting of uncovered dirt or rock or ground that is covered by grass or other plant life, crushed rock, gravel, or other similar natural substance.

**Source:** Laws 1994, LB 421, § 11. Operative date February 16, 1994.

**76-2312. Normal working hours, defined.** Normal working hours shall mean the hours of 7 a.m. to 5 p.m. on a business day in each time zone in the state.

**Source:** Laws 1994, LB 421, § 12. Operative date February 16, 1994.

**76-2313. Operator, defined.** Operator shall mean a person who manages or controls the functions of an underground facility but shall not include a person who is an owner or tenant of real property where underground facilities are located if the underground facilities are used exclusively to furnish services or commodities on the real property.

**Source:** Laws 1994, LB 421, § 13. Operative date February 16, 1994.

**76-2314. Permanent surface, defined.** Permanent surface shall mean any ground that is covered by a hard, artificial, weatherproof material such as concrete, asphalt, or other similar artificial substance.

**Source:** Laws 1994, LB 421, § 14. Operative date February 16, 1994.

**76-2315. Person, defined.** Person shall mean an individual, partnership, limited liability company, association, municipality, state, county, political subdivision, utility, joint venture, or corporation and shall include the employer of an individual.

**Source:** Laws 1994, LB 421, § 15. Operative date February 16, 1994.

**76-2316. Statewide one-call notification center, defined.** Statewide one-call notification center shall mean the association certified by the State Fire Marshal, operating on a nonprofit basis, supported by its members, and having as its principal purpose the statewide receipt and dissemination to participating operators of information on a fair and uniform basis concerning intended excavation in an area where the operators have underground facilities.

**Source:** Laws 1994, LB 421, § 16. Operative date February 16, 1994.

**76-2317. Underground facility, defined.** Underground facility shall mean any item of personal property buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic communications, telephonic communications, telegraphic communications, cable television, electric energy, oil, gas, hazardous liquids, or other substances, including pipes, trunk lines, fiber optic cables, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such personal property.

**Source:** Laws 1994, LB 421, § 17. Operative date February 16, 1994.

**76-2318. Center; membership required.** Operators of underground facilities shall become members of and participate in the statewide one-call notification center.

**Source:** Laws 1994, LB 421, § 18. Operative date February 16, 1994.

**76-2319. Board of directors; rules and regulations; selection of vendor.** The center shall be governed by a board of directors who shall establish the operating procedures and the technology needed for the center pursuant to rules and regulations adopted and promulgated by the State Fire Marshal. The rules and regulations adopted and promulgated by the State Fire Marshal shall provide for the qualifications, appointment, retention, and composition of the board of directors. The board of directors shall also establish a competitive bidding procedure to select a vendor to provide the notification service, establish a procedure by which members of the center share the costs of the center on a fair, reasonable, and nondiscriminatory basis, and do all other things necessary to implement the purpose of the center. Any agreement between the center and a vendor for the notification service may be modified from time to time by the board of directors, and any agreement shall be reviewed by the board of directors at least once every three years, with an opportunity to receive new bids if desired by the board of directors.

**Source:** Laws 1994, LB 421, § 19. Operative date February 16, 1994.

**76-2320. Operator; duty to furnish information; center operational, when; certification.**

Every operator shall furnish the vendor selected by the board of directors with information concerning the location of its underground facilities. Every operator having underground facilities in existence in this state on February 16, 1994, shall furnish such information to the vendor by April 3, 1995. The vendor shall have the center operational on October 2, 1995. The center shall be certified by the State Fire Marshal, and the certification shall be reviewed every two years to ensure continued compliance with federal law.

**Source:** Laws 1994, LB 421, § 20. Operative date February 16, 1994.

**76-2321. Excavation; notice; contents; commencement.**

- (1) A person shall not commence any excavation without first giving notice to every operator. An excavator's notice to the center shall be deemed notice to all operators. An excavator's notice to operators shall be ineffective for purposes of this subsection unless given to the center. Notice to the center shall be given at least two full business days, but no more than ten business days, before commencing the excavation, except notice may be given more than ten business days in advance when the excavation is a road construction, widening, repair, or grading project provided for in sections 70-311 to 70-313 and 86-708 to 86-710. An excavator may commence work before the elapse of two full business days when
  - (a) notice to the center has been given as provided by this subsection and
  - (b) all the affected operators have notified the excavator that the location of all the affected operator's underground facilities have been marked or that the operators have no underground facilities in the location of the proposed excavation.
- (2) The notice required pursuant to subsection (1) of this section shall include
  - (a) the name and telephone number of the person making the notification,
  - (b) the name, address, and telephone number of the excavator,
  - (c) the location of the area of the proposed excavation, including the range, township, section, and quarter section, unless the area is within the corporate limits of a city or village, in which case the location may be by street address,
  - (d) the date and time excavation is scheduled to commence,
  - (e) the depth of excavation,
  - (f) the type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring, and
  - (g) whether the use of explosives is anticipated.

**Source:** Laws 1994, LB 421, § 21; Laws 2002, LB 1105, § 496.

**76-2322. Excavator; notice to center.** An excavator shall serve notice of intent to excavate upon the center by calling the center's toll-free telephone number. The center shall inform the excavator of all operators to whom such notice will be transmitted and shall promptly transmit such notice to every operator having an underground facility in the area of intended excavation. The center shall assign an identification number to each notice received.

**Source:** Laws 1994, LB 421, § 22. Operative date October 2, 1995.

**76-2323. Underground facilities; mark or identify.**

- (1) Upon receipt of the information contained in the notice pursuant to section 76-2321, an operator shall advise the excavator of the approximate location of underground facilities in the area of the proposed excavation by marking or identifying the location of the underground facilities with stakes, flags, paint, or any other clearly identifiable marking or reference point. The location of the underground facility given by the operator shall be within a strip of land eighteen inches on either side of the marking or identification plus one-half of the width of the underground facility. If in the opinion of the operator the precise location of a facility cannot be determined and marked as required, the operator shall provide all pertinent information and field locating assistance to the excavator at a mutually agreed to time. The location shall be marked or identified using color standards prescribed by the center. The operator shall respond no later than two business days after receipt of the information in the notice or at a time mutually agreed to by the parties.
- (2) The marking or identification shall be done in a manner that will last for a minimum of five business days on any nonpermanent surface and a minimum of ten business days on any permanent surface. If the excavation will continue for longer than five business days, the operator shall remark or reidentify the location of the underground facility upon the request of the excavator. The request for remarking or reidentification shall be made through the center.
- (3) An operator who determines that it does not have any underground facility located in the area of the proposed excavation shall notify the excavator of the determination prior to the date of commencement of the excavation.

**Source:** Laws 1994, LB 421, § 23. Operative date October 2, 1995.



**76-2324. Excavator; liability for damage; when.** An excavator who fails to give notice of an excavation pursuant to section 76-2321 and who damages an underground facility by such excavation shall be strictly liable to the operator of the underground facility for the cost of all repairs to the underground facility. An excavator who gives the notice and who damages an underground facility shall be liable to the operator for the cost of all repairs to the underground facility unless the damage to the underground facility was due to the operator's failure to comply with section 76-2323. An excavator who fails to give notice of an excavation pursuant to section 76-2321 and who damages an underground facility that is operated by the excavator shall not be in violation of the One-Call Notification System Act.

In addition to any liability provided in this section an operator of a damaged underground facility shall be entitled to any other remedies available at law or in equity provided by statute or otherwise.

**Source:** Laws 1994, LB 421, § 24. Operative date October 2, 1995.

**76-2325. Violations; civil penalty.** Any person who violates the provisions of section 76-2320, 76-2321, 76-2322, 76-2323, 76-2326, or 76-2330 shall be subject to a civil penalty as follows:

- (1) For a violation related to a gas or hazardous liquid underground pipeline facility, an amount not to exceed ten thousand dollars for each violation for each day the violation persists, up to a maximum of five hundred thousand dollars; and
- (2) For a violation related to any other underground facility, an amount not to exceed five hundred dollars for each day the violation persists, up to a maximum of five thousand dollars.

An action to recover a civil penalty shall be brought by the Attorney General or a prosecuting attorney on behalf of the State of Nebraska in any court of competent jurisdiction of this state. The trial shall be before the court, which shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the absence or existence of prior violations, whether the violation was a willful act, any good faith attempt to achieve compliance, and such other matters as justice may require in determining the amount of penalty imposed. All penalties shall be handled and distributed pursuant to Article VII, section 5, of the Constitution of Nebraska.

**Source:** Laws 1994, LB 421, § 25. Operative date February 16, 1994.

**76-2326. Damage; duty of excavator.** If any underground facility is damaged, dislocated, or disturbed before or during excavation, the excavator shall immediately notify the center. An excavator shall not conceal or attempt to conceal damage, dislocation, or disturbance of an underground facility and shall not repair or attempt to repair the underground facility unless authorized by the operator of the underground facility.

**Source:** Laws 1994, LB 421, § 26. Operative date October 2, 1995.

**76-2327. Incorrect location; duty of excavator.** If in the course of excavation the excavator discovers that the operator has incorrectly located the underground facility, he or she shall notify the center as soon as practical but no later than seventy-two hours after discovery.

**Source:** Laws 1994, LB 421, § 27. Operative date October 2, 1995.

**76-2328. Local permits; treatment; claims against political subdivisions.** The One-Call Notification System Act shall not affect or impair any local ordinances or other provisions of law requiring permits to be obtained before an excavation. A permit issued by a governing body shall not relieve an excavator from complying with the requirements of the act. No claim shall be maintained under the One-Call Notification System Act against a political subdivision or its officers, agents, or employees except to the extent, and only to the extent, provided by the Political Subdivisions Tort Claims Act.

**Source:** Laws 1994, LB 421, § 28. Operative date February 16, 1994.

**Cross Reference:** Political Subdivisions Tort Claims Act, see section 13-901.

**76-2329. Emergency conditions; notification requirements; liability.** Sections 76-2321 and 76-2323 shall not apply to an excavation made under an emergency condition if all reasonable precautions are taken to protect the underground facilities. If an emergency condition exists, the excavator shall give notification in substantial compliance with section 76-2321 as soon as practical. Upon being notified that an emergency condition exists, each operator shall provide all reasonably available location information to the excavator as soon as possible. If the emergency condition has arisen through no fault of the excavator, sections 76-2324 and 76-2325 shall not apply and the excavator shall be liable for damage to any underground facility located in the area if the damage occurs because of the negligent acts or omissions of the excavator.

**Source:** Laws 1994, LB 421, § 29. Operative date October 2, 1995.

**76-2330. Center; duties.** The center shall:

- (1) Maintain adequate records documenting compliance with the requirements of the One-Call Notification System Act, including records of all telephone calls and records of all location requests for the preceding five years which will be made available and printed upon request of an operator or excavator;
- (2) Provide the notification service during normal working hours at a minimum; and
- (3) Provide procedures for emergency notification for calls received at other than normal working hours.

**Source:** Laws 1994, LB 421, § 30. Operative date February 16, 1994.

## Political Subdivision Tax Levies and Budget Limitations

**77-1603.** Repealed. Laws 1996, LB 1085, s. 60.

**77-3438.** Repealed. Laws 1996, LB299, s. 35.

**77-3438.01.** Repealed. Laws 1996, LB299, s. 35.

**77-3439.** Repealed. Laws 1996, LB299, s. 35.

**77-3440.** Repealed. Laws 1996, LB299, s. 35.

**77-3443. Other political subdivisions; levy limit; levy request; governing body; duties; allocation of levy.**

- (1) All political subdivisions, other than
  - (a) school districts, community colleges, natural resources districts, educational service units, cities, villages, counties, municipal counties, and sanitary and improvement districts and
  - (b) political subdivisions subject to municipal allocation under subsection (2) of this section, may levy taxes as authorized by law which are authorized by the county board of the county or the council of a municipal county in which the greatest portion of the valuation is located, which are counted in the county or municipal county levy limit provided in section 77-3442, and which do not collectively total more than fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property for all governments for which allocations are made by the municipality, county, or municipal county, except that such limitation shall not apply to property tax levies for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport. The county board or council shall review and approve or disapprove the levy request of all political subdivisions subject to this subsection. The county board or council may approve all or a portion of the levy request and may approve a levy request that would allow the requesting political subdivision to levy a tax at a levy greater than that permitted by law. The county board of a county or the council of a municipal county which contains a transit authority created pursuant to section 14-1803 shall allocate no less than three cents per one hundred dollars of taxable property within the city or municipal county subject to the levy to the transit authority if requested by such authority. For any political subdivision subject to this subsection that receives taxes from more than one county or municipal county, the levy shall be allocated only by the county or municipal county in which the greatest portion of the valuation is located. The county board of equalization shall certify all levies by October 15 to insure that the taxes levied by political subdivisions subject to this subsection do not exceed the allowable limit for any parcel or item of taxable property. The levy allocated by the county or municipal county may be exceeded as provided in section 77-3444.
- (2) All city airport authorities established under the Cities Airport Authorities Act, community redevelopment authorities established under the Community Development Law, transit authorities established under the Transit Authority Law, and offstreet parking districts established under the Offstreet Parking District Act may be allocated property taxes as authorized by law which are authorized by the city, village, or municipal county and are counted in the city or village levy limit or municipal county levy limit provided by section 77-3442, except that such limitation shall not apply to property tax levies for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport. For offstreet parking districts established under the Offstreet Parking District Act, the tax shall be counted in the allocation by the city proportionately, by dividing the total taxable valuation of the taxable property within the district by the total taxable valuation of the taxable property within the city multiplied by the levy of the district. The city council of a city which has created a transit authority pursuant to section 14-1803 or the council of a municipal county which contains a transit authority shall allocate no less than three cents per one hundred dollars of taxable property subject to the levy to the transit authority if requested by such authority. The city council, village board, or council shall review and approve or disapprove the levy request of the political subdivisions subject to this subsection. The city council, village board, or council

may approve all or a portion of the levy request and may approve a levy request that would allow a levy greater than that permitted by law. The levy allocated by the municipality or municipal county may be exceeded as provided in section 77-3444.

- (3) On or before August 1, all political subdivisions subject to county, municipal, or municipal county levy authority under this section shall submit a preliminary request for levy allocation to the county board, city council, village board, or council that is responsible for levying such taxes. The preliminary request of the political subdivision shall be in the form of a resolution adopted by a majority vote of members present of the political subdivision's governing body. The failure of a political subdivision to make a preliminary request shall preclude such political subdivision from using procedures set forth in section 77-3444 to exceed the final levy allocation as determined in subsection (4) of this section.
- (4) Each county board, city council, village board, or council shall
- (a) adopt a resolution by a majority vote of members present which determines a final allocation of levy authority to its political subdivisions and
  - (b) forward a copy of such resolution to the chairperson of the governing body of each of its political subdivisions. No final levy allocation shall be changed after September 1 except by agreement between both the county board, city council, village board, or council which determined the amount of the final levy allocation and the governing body of the political subdivision whose final levy allocation is at issue.

**Source:** Laws 1996, LB 1114, § 2; Laws 1997, LB 269, § 57; Laws 1998, LB 306, § 37; Laws 1999, LB 141, § 12; Laws 2001, LB 142, § 58; Laws 2002, LB 994, § 26. Effective date April 20, 2002.

**79-4,122.** Transferred to 79-705.

**79-4,123.** Transferred to 79-706.

**79-4,124.** Repealed. Laws 1984, LB 749, s. 2.

**79-705. State Fire Day; Fire Recognition Day; designation; how observed.** For the purpose of creating public sentiment and calling public attention to the great damage caused both to life and property by fire, the Friday before Fire Recognition Day shall be designated and known as State Fire Day. State Fire Day shall be observed by the public, private, and parochial schools of the state with exercises appropriate to the subject and the day. The second Saturday in May is designated and shall be known as Fire Recognition Day.

**Source:** Laws 1911, c. 126, § 1, p. 431; R.S.1913, § 6850; C.S.1922, § 6421; C.S.1929, § 79-1201; R.S.1943, § 79-1201; Laws 1949, c. 256, § 160, p. 746; Laws 1971, LB 917, § 1; R.S.1943, (1994), § 79-4,122; Laws 1996, LB 900, § 379; Laws 1997, LB 347, § 18.

**79-706. Fire prevention instruction; requirements.** In addition to any required monthly fire drill, every public, private, denominational, or parochial school shall provide regular periods of instruction in the subject of fire dangers and in methods of fire prevention.

**Source:** Laws 1911, c. 126, § 2, p. 431; R.S.1913, § 6851; C.S.1922, § 6422; C.S.1929, § 79-1202; R.S.1943, § 79-1202; Laws 1949, c. 256, § 161, p. 746; Laws 1972, LB 1284, § 21; Laws 1982, LB 933, § 3; Laws 1984, LB 749, § 1; R.S.1943, (1994), § 79-4,123; Laws 1996, LB 900, § 380. Effective date July 19, 1996.

## State Fire Marshal

**81-501.01. State Fire Marshal; appointment; confirmation by Legislature.** The Governor shall, with the advice and consent of the Legislature, appoint a State Fire Marshal who shall, under the general direction and supervision of the Governor, perform the duties and exercise the powers and have the rights and privileges conferred by sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157. He or she may be removed from office at the pleasure of the Governor.

**Source:** Laws 1925, c. 183, § 1, p. 479; C.S.1929, § 81-5501; R.S.1943, § 81-501; Laws 1974, LB 622, § 1; Laws 1993, LB 348, § 78. Operative date July 1, 1993.

**81-502. State Fire Marshal; fire prevention and safety; duties; delegation of authority to local fire prevention personnel; rules and regulations; application; late penalty.**

- (1) It shall be the duty of the State Fire Marshal, under authority of the Governor:
  - (a) To enforce all laws of the state relating to the suppression of arson and investigation of the cause, origin, and circumstances of fires;
  - (b) To promote safety and reduce loss by fire;
  - (c) To make an investigation for fire safety of the premises and facilities of:
    - (i) Liquor establishments for which a license or renewal of a license is sought, upon request of the Nebraska Liquor Control Commission, pursuant to section 53-119.01;
    - (ii) Licensed foster care facilities or applicants for licenses for foster care facilities, upon request by the Department of Health and Human Services, pursuant to section 71-1903;
    - (iii) Licensed providers of programs or applicants for licenses to provide such programs, upon request of the Department of Health and Human Services Regulation and Licensure, pursuant to section 71-1913. The State Fire Marshal shall report the results of the investigation to the department within thirty days after receipt of the request from the department;
    - (iv) Licensed hospitals, skilled nursing facilities, intermediate care facilities, or other health care facilities which are licensed under the Health Care Facility Licensure Act or applicants for licenses for such facilities or institutions, upon request by the Department of Health and Human Services Regulation and Licensure, pursuant to section 71-441; and
    - (v) Mobile home parks for which a license or renewal of a license is sought, upon request of the Department of Health and Human Services Regulation and Licensure, pursuant to section 71-4635; and
  - (d) After a careful study and investigation of relevant data, to adopt, promulgate, alter, and enforce, through inspections and code compliance, orders, rules, and regulations covering:
    - (i) The prevention of fires;
    - (ii) The storage, sale, and use of flammable liquids, combustibles, and fireworks;
    - (iii) Electric wiring and heating, protection equipment devices, materials, furnishings, and other safeguards within the structure necessary to promote safety and reduce loss by fire, and the means and adequacy of exits, in case of fire, in assembly, educational, institutional, residential, mercantile, office, storage, and industrial-type occupancies as such structures are defined in the National Fire Protection Association, Pamphlet Number 101, and associated pamphlets, and all other buildings, structures, and enclosures in which numbers of persons congregate from time to time for any purpose whether privately or publicly owned;
    - (iv) Design, construction, location, installation, and operation of equipment for storing, handling, and utilization of liquefied petroleum gases, specifying the odorization of such gases and the degree thereof;
    - (v) Chemicals, prozylin plastics, X-ray nitrocellulose films, or any other hazardous material that may now or hereafter exist;
    - (vi) Tanks used for the storage of regulated substances pursuant to the Petroleum Products and Hazardous Substances Storage and Handling Act; and
    - (vii) Accessibility standards and specifications adopted pursuant to section 81-5,147.
- (2) The State Fire Marshal may enter into contracts with private individuals or other agencies, boards, commissions, or governmental bodies for the purpose of carrying out his or her duties and responsibilities pursuant to the Arson Reporting Immunity Act, the Nebraska Natural Gas Pipeline Safety Act of 1969, and sections 81-502 to 81-541.01, 81-5,132 to 81-5,146, and 81-5,151 to 81-5,157.

- (3) The State Fire Marshal may delegate the authority set forth in this section to qualified local fire prevention personnel. The State Fire Marshal may overrule a decision, act, or policy of the local fire prevention personnel. When the State Fire Marshal overrules the local personnel, such local personnel may follow the appeals procedure established by sections 81-502.01 to 81-502.03. Such delegation of authority may be revoked by the State Fire Marshal for cause upon thirty days' notice after a hearing.
- (4) The State Fire Marshal, first assistant fire marshal, and deputies shall have such other powers and perform such other duties as are set forth in sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157 and as may be conferred and imposed by law.
- (5) The rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section may conform generally to the standards recommended by the National Fire Protection Association, Pamphlet Number 101, known as the Life Safety Code, and associated pamphlets, but not when doing so would impose an unduly severe or costly burden without substantially contributing to the safety of persons or property. This section and the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section shall apply to existing as well as new buildings, structures, and enclosures. Such rules and regulations shall also apply to sites or structures in public ownership listed on the National Register of Historic Places but without destroying the historic quality thereof.
- (6) Plans for compliance with the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section shall be reviewed by the State Fire Marshal. Plans submitted after remodeling or construction has begun shall be accompanied by a penalty of fifty dollars in addition to the plan review fee set out in subdivision (4)(a) of section 81-505.01.

**Source:** Laws 1925, c. 183, § 2, p. 479; C.S.1929, § 81-5502; R.S.1943, § 81-502; Laws 1947, c. 313, § 1, p. 949; Laws 1967, c. 446, § 3, p. 1389; Laws 1969, c. 794, § 1, p. 3000; Laws 1972, LB 782, § 1; Laws 1973, LB 180, § 1; Laws 1976, LB 986, § 3; Laws 1981, LB 266, § 2; Laws 1982, LB 792, § 1; Laws 1983, LB 498, § 5; Laws 1984, LB 130, § 15; Laws 1985, LB 253, § 9; Laws 1986, LB 217, § 12; Laws 1987, LB 459, § 6; Laws 1989, LB 215, § 18; Laws 1993, LB 251, § 4; Laws 1993, LB 348, § 79; Laws 1993, LB 377, § 7; Laws 1995, LB 401, § 44; Laws 1996, LB 1044, § 837; Laws 1997, LB 307, § 215; Laws 1999, LB 594, § 70; Laws 2000, LB 819, § 153. Operative date January 1, 2001.

**Cross References:** Arson Reporting Immunity Act, see section 81-5,115. Nebraska Natural Gas Pipeline Safety Act of 1969, see section 81-552. Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.

**81-502.01. Nebraska Fire Safety Appeals Board; members; appointment; qualifications; term.** For the purposes of assisting the State Fire Marshal in matters pertaining to the performance of his or her duties, there is hereby established the Nebraska Fire Safety Appeals Board. Such board shall consist of the following members:

- (1) A representative of the fire insurance industry with experience in fire prevention inspections,
- (2) an architect licensed in this state,
- (3) a member of a board of education of a public school district,
- (4) a fire protection engineer,
- (5) a member of the inspection division of a paid fire department in this state,
- (6) an active member of a volunteer fire department in this state,
- (7) a representative of the Department of Health and Human Services,
- (8) a representative of the Nebraska Association of Hospitals and Health Systems, and
- (9) a representative of the Department of Health and Human Services Regulation and Licensure.

The members shall be appointed by the Governor and shall serve for a term of four years.

**Source:** Laws 1971, LB 570, § 1; Laws 1977, LB 485, § 1; Laws 1996, LB 1044, § 838; Laws 1997, LB 622, § 116.

**81-502.02. Nebraska Fire Safety Appeals Board; duties; expenses; meetings.** The board shall select from among its members a chairperson and adopt and promulgate rules and regulations to govern its procedures. Any vacancy occurring in the board shall be filled in the manner in which original appointments are made. No person shall receive any compensation for services rendered as a member of the board. Each member of the board shall be reimbursed for his or her actual and necessary expenses as provided in sections 81-1174 to 81-1177 for state employees. The board shall meet at such times as the business of the board requires and at such places as may be established by its chairperson. When requested to do so by the State Fire Marshal, it shall be the duty of the board to make a study of the specific problems, questions, or appeals presented to the board. No member of the board shall sit in hearing upon any question in which such member or any corporation of which he or she is a shareholder or employee is a party.

**Source:** Laws 1971, LB 570, § 2; Laws 1977, LB 485, § 2; Laws 1981, LB 204, § 169; Laws 1988, LB 893, § 5.

**81-502.03. Nebraska Fire Safety Appeals Board; disagreement; hearing; notice; decision; written report prior to order; exception.** In case of disagreement concerning the propriety of any action taken or proposed to be taken by the State Fire Marshal or the application of any statute, rule, or regulation of his or her office with respect to any establishment or installation, the State Fire Marshal may, and upon application of any party in interest, shall provide for a hearing before the Nebraska Fire Safety Appeals Board in the county of the establishment or installation which is the subject of the disagreement. At least ten days' written notice shall be given to the governing body responsible for the establishment or installation involved and to any public official having jurisdiction. The board shall make a decision based upon the evidence brought forth in the hearing and issue its order accordingly. Prior to ordering any political or governmental subdivision of the State of Nebraska to make any modification in the design or construction of any public building or any modification in the location, installation, or operation of any existing equipment in any public building or to replace such equipment, the State Fire Marshal, his or her first assistant, or one of his or her deputies shall personally appear at a regular meeting of the governing board of such subdivision and present a written report stating the condition of such building or equipment and the reason why such building should be modified or such equipment should be modified or replaced, and a copy of such report shall be attached to the order. Nothing in this section shall prevent the State Fire Marshal from ordering necessary repairs, and nothing in sections 81-502.01 to 81-502.03 shall prevent the State Fire Marshal, when actual and immediate danger to life exists, from ordering and requiring the occupants to vacate a building or structure subject to his or her jurisdiction.

**Source:** Laws 1971, LB 570, § 3; Laws 1977, LB 485, § 3; Laws 1988, LB 893, § 6. Effective date July 9, 1988.

**81-502.04. Rules and regulations; enforcement; procedure.** The enforcement of rules and regulations adopted and promulgated by the State Fire Marshal under section 81-502 shall be as follows:

- (1) Any order of the State Fire Marshal under the authority granted to him or her by section 81-502 shall be in writing addressed to the owner or person in charge of the premises affected by such order;
- (2) If the affected party or organization does not comply with the final order, the State Fire Marshal shall apply to the district court of the county in which the premises are located to obtain court enforcement of the order. The county attorney of the county in which the action is brought shall represent the State Fire Marshal and the action shall be brought in the name of the State of Nebraska and be tried the same as any action in equity; and
- (3) If the affected party or organization feels that the order of the State Fire Marshal is not necessary for the safety and welfare of the persons using or to use the premises regarding which the order is made, the party or organization may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1973, LB 180, § 2; Laws 1988, LB 893, § 7; Laws 1988, LB 352, § 167.

**81-503. State Fire Marshal; first assistant; appointment; other employees; duties; uniforms.**

- (1) The State Fire Marshal may appoint a first assistant fire marshal and such deputies, inspectors, and other persons as in his or her discretion may be necessary to carry into effect sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157, the Nebraska Natural Gas Pipeline Safety Act of 1969, the Petroleum Products and Hazardous Substances Storage and Handling Act, and any other statutory duties imposed upon the State Fire Marshal. He or she may also, at his or her pleasure, remove such first assistant and any of such deputies as he or she may deem advisable. The deputies and inspectors shall perform such duties and have and enjoy all the rights, privileges, and immunities granted by law. The State Fire Marshal may also employ such clerical assistants, office employees, and other persons as he or she may deem advisable and necessary to carry such duties into effect.
- (2) The State Fire Marshal, the first assistant fire marshal, each deputy, and each inspector shall wear full uniform when performing statutory duties. The State Fire Marshal shall determine the type of clothing, in relation to the duty being performed, necessary to meet the full uniform requirement.

**Source:** Laws 1925, c. 183, § 3, p. 480; C.S.1929, § 81-5503; R.S.1943, § 81-503; Laws 1947, c. 314, § 1, p. 951; Laws 1953, c. 330, § 1, p. 1088; Laws 1957, c. 375, § 1, p. 1315; Laws 1969, c. 763, § 10, p. 2891; Laws 1983, LB 498, § 6; Laws 1988, LB 893, § 8; Laws 1993, LB 348, § 80. Operative date July 1, 1993.

**Cross References:** Nebraska Natural Gas Pipeline Safety Act of 1969, see section 81-552. Petroleum Products and Hazardous Substances Storage and Handling Act see section 81-15,117.

**81-504. State Fire Marshal; legal counsel; appointment by Attorney General; compensation.** The Attorney General may appoint a special attorney to assist and advise the State Fire Marshal. The attorney appointed for this purpose shall at all times be under the supervision of the Attorney General, who shall fix his or her compensation, which shall be paid wholly out of the State Fire Marshal Cash Fund.

**Source:** Laws 1925, c. 183, § 4, p. 480; C.S.1929, § 81-5504; R.S.1943, § 81-504; Laws 2004, LB 1091, § 12. Effective date April 14, 2004.

**81-505. First assistant and deputies; duties.** The duties of the first assistant and the deputies shall be to operate under the direction of and to assist the State Fire Marshal in the execution of sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157, the Nebraska Natural Gas Pipeline Safety Act of 1969, the Petroleum Products and Hazardous Substances Storage and Handling Act, and any other statutory duties imposed upon the State Fire Marshal. In the event of a vacancy in the office of State Fire Marshal and until a successor is appointed or during the absence or disability of that officer, the first assistant fire marshal, with the assent and approval of the Governor, shall assume the duties of that office.

**Source:** Laws 1925, c. 183, § 5, p. 480; C.S.1929, § 81-5505; R.S.1943, § 81-505; Laws 1969, c. 763, § 11, p. 2892; Laws 1988, LB 893, § 9; Laws 1993, LB 251, § 5; Laws 1993, LB 348, § 81.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB 251, section 5, with LB 348, section 81, to reflect all amendments.

**Note:** The changes made by LB 251, section 5, became effective September 9, 1993. The changes made by LB 348, section 81, became operative July 1, 1993.

**Cross References:** Nebraska Natural Gas Pipeline Safety Act of 1969, see section 81-552. Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.

**81-505.01. State Fire Marshal; establish and assess fees; procedures.**

- (1) The State Fire Marshal shall establish and assess fees not to exceed the actual costs for the performance of services by the State Fire Marshal or by qualified local fire prevention personnel to whom the State Fire Marshal has delegated authority to perform such services. Prior to establishing or altering such fees, the State Fire Marshal shall hold a public hearing on the question of the adoption of or change in fees. Notice of such hearing shall be given at least thirty days prior thereto
  - (a) by publication in a newspaper having general circulation in the state and
  - (b) by notifying in writing the head of any agency or department having jurisdiction over facilities that would be subject to the fees. Fees for services performed by the State Fire Marshal shall be paid to the State Fire Marshal and shall be remitted to the State Treasurer for credit to the State Fire Marshal Cash Fund. Fees for services performed by local fire prevention personnel shall be paid directly to the office of the local fire prevention personnel.
- (2) The fee for inspection for fire safety of any premises or facility pursuant to section 81-502 shall be not less than twenty-five nor more than one hundred fifty dollars and shall be paid by the licensee or applicant for a license. The fee for inspection for fire safety of the same premises or facility made within twelve months after the last prior inspection shall be not less than twenty-five nor more than one hundred fifty dollars and shall be paid by the licensee or applicant for a license. The fees for inspection for fire safety of foster family homes as defined in section 71-1902 may be paid by the Department of Health and Human Services.
- (3) The fee for providing investigation reports to insurance companies shall not exceed three dollars for each report provided. The State Fire Marshal may charge an amount not to exceed the actual cost of preparation or any other approved information release.
- (4) (a) Except as provided in subdivision (b) of this subsection, the fee for reviewing plans, blueprints, and shop drawings to determine compliance with rules and regulations adopted and promulgated pursuant to section 81-502 shall be assessed according to the following schedule:

TOTAL VALUE OF PROPOSED STRUCTURE OR IMPROVEMENT	FEE
\$1 - \$5,000 . . . . .	\$5.00
\$5,001 - \$25,000 . . . . .	\$5.00 for the first \$5,000.00 plus \$2.00 for each additional \$5,000.00 or fraction thereof.



\$25,001 - \$50,000 . . . . .	\$15.00 for the first \$25,000.00 plus \$2.00 for each additional \$5,000.00 or fraction thereof.
\$50,001 - \$100,000 . . . . .	\$25.00 for the first \$50,000.00 plus \$1.00 for each additional \$5,000.00 or fraction thereof.
\$100,001 - \$200,000 . . . . .	\$35.00 for the first \$100,000.00 plus \$1.00 for each additional \$10,000.00 or fraction thereof.
\$200,001 or more . . . . .	\$50.00 for the first \$200,000.00 plus \$1.00 for each additional \$10,000.00 or fraction thereof, except that the total fee shall not exceed \$500.00.

- (b) The fees set out in subdivision (a) of this subsection shall not be assessed or collected by any political subdivision to which the State Fire Marshal has delegated the authority to conduct such review and which reviews plans, blueprints, or shop drawings to determine compliance with such political subdivision's own fire safety regulations. Nothing in this subdivision shall be construed to prohibit such political subdivision from assessing or collecting a fee set by its governing board for such review.
- (c) An additional fee equal to fifty percent of the fee charged pursuant to subdivision (a) of this subsection shall be assessed for reviewing plans, blueprints, and shop drawings to determine compliance with the accessibility standards and specifications adopted pursuant to section 81-5,147, except that the additional fee assessed pursuant to this subdivision shall not exceed two hundred fifty dollars.

**Source:** Laws 1983, LB 498, § 7; Laws 1986, LB 471, § 1; Laws 1988, LB 893, § 10; Laws 1988, LB 930, § 3; Laws 1993, LB 251, § 6; Laws 1993, LB 377, § 8; Laws 1996, LB 1044, § 839; Laws 1997, LB 307, § 216.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB 251, section 6, with LB 377, section 8, to reflect all amendments.

**81-506. Fires; investigation by city or county authorities; reports to State Fire Marshal required.** The chief of the fire department of every city or village in which a fire department is established, the mayor of every incorporated city in which no fire department exists, the town clerk of every organized township, or the county commissioner in every commissioner district in counties not under township organization without the limits of any organized city or village shall investigate or cause to be investigated the cause, origin, and circumstances of every fire occurring in such city, village, township, or commissioner district by which property has been destroyed or damaged. All fires of unknown origin shall be reported, and such officers shall especially make investigation and report as to whether such fire was the result of carelessness, accident, or design. Such investigation shall begin immediately after the occurrence of such fire, and the State Fire Marshal shall have the right to supervise and direct such investigation whenever he or she deems it expedient or necessary. The officer making the investigation of fires occurring in cities, villages, townships, or commissioner districts shall forthwith notify the State Fire Marshal and shall, within one week of the occurrence of the fire, furnish him or her written statement of all the facts relating to the cause and origin of the fire and such further information as he or she may call for.

**Source:** Laws 1925, c. 183, § 6, p. 480; C.S.1929, § 81-5506; R.S.1943, § 81-506; Laws 1988, LB 893, § 11. Effective date July 9, 1988.

**81-507. State Fire Marshal; records and statistics on fires required.** The State Fire Marshal shall keep in his office a record by alphabetical index, name of town, and by county and precinct in all unincorporated territory, of all the fires occurring in the state, together with all facts, statistics and circumstances, including the cause and origin of the fires, which may be determined by the investigation provided by section 81-506. Such reports and statistics shall be at all times open to public inspection.

**Source:** Laws 1925, c. 183, § 6, p. 480; C.S.1929, § 81-5506.

**81-508. State Fire Marshal; arson; investigations; evidence.** The State Fire Marshal shall, when in his opinion further investigation is necessary, take or cause to be taken the testimony on oath of all persons supposed to be

cognizant of any facts or to have any means of knowledge in relation to the matter as to which an examination is herein required to be made, and shall cause the same to be reduced to writing. If he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, he shall file complaint with the county attorney, who shall cause such person to be arrested and charged with such offense. The fire marshal shall furnish to the proper prosecuting attorney all such evidence, together with a copy of all names of all witnesses and all the information obtained by him, including a copy of all pertinent and material testimony taken in the case; and shall keep a record of the proceedings and progress made in all such prosecutions for arson and the result of all cases finally disposed of.

**Source:** Laws 1925, c. 183, § 7, p. 481; C.S.1929, § 81-5507.

**81-509. State Fire Marshal; investigations; witnesses; subpoena; oath; perjury; contempt.**

- (1) The State Fire Marshal, first assistant fire marshal, and deputies shall each have the power in any county of the State of Nebraska to summon and compel the attendance of witnesses before them, or any of them, to testify in relation to any matter which is by the provisions of sections 81-501.01 to 81-531 a subject of inquiry and investigation, and may require the production of any book, paper, or document deemed pertinent thereto by them or any of them. Such summons shall be served in the same manner and have the same effect as subpoenas from district courts. All witnesses shall receive the same compensation as is paid to witnesses in district courts, with mileage to be computed at the rate provided in section 81-1176 for state employees, which shall be paid out of the State Fire Marshal Cash Fund upon vouchers signed by the State Fire Marshal, first assistant fire marshal, or deputy before whom any witnesses shall have attended. Such officer shall, at the close of the investigation wherein such witness was subpoenaed, certify to the attendance and mileage of such witness and file such certificate in the office of the State Fire Marshal. All investigations held by or under the direction of the State Fire Marshal or his or her subordinates may be private, and persons other than those required to be present may be excluded from the place where such investigation is held. Witnesses may be kept separate and apart from each other and not allowed to communicate with each other until they have been examined.
- (2) The State Fire Marshal, first assistant fire marshal, and deputies are each authorized and empowered to administer oaths and affirmations to any persons appearing as witnesses before them, and false swearing in any manner or proceeding aforesaid shall be deemed perjury and shall be punished as such upon conviction in any court of competent jurisdiction.
- (3) Any witness
  - (a) who refuses to be sworn,
  - (b) who refuses to testify,
  - (c) who disobeys any lawful order of the State Fire Marshal, first assistant fire marshal, or deputy in relation to any investigation,
  - (d) who fails or refuses to produce any paper, book, or document touching any matter under examination, or
  - (e) who commits any contemptuous conduct after being summoned to appear before the State Fire Marshal, first assistant, or deputy to give testimony in relation to any matter or subject under examination or investigation as aforesaid shall be subject to conviction for contempt and, upon conviction of such contempt before any court of competent jurisdiction, shall be punished as provided by law for contempt of the orders of a district court, except that no person shall be compelled to give testimony which might tend to incriminate him or her or to give testimony which is considered privileged by the laws of the State of Nebraska.

**Source:** Laws 1925, c. 183, § 8, p. 482; C.S.1929, § 81-5508; R.S.1943, § 81-509; Laws 1981, LB 204, § 170; Laws 1981, LB 205, § 2; Laws 1988, LB 893, § 12; Laws 2004, LB 1091, § 13.  
Effective date April 14, 2004.

**81-510. State Fire Marshal; investigations; witnesses; disobedience of subpoena or contumacy; penalty.**

Disobedience of any subpoena in such proceedings, or contumacy of a witness, may, upon application of the State Fire Marshal to the district court of the county in which the offense was committed, be punished by the district court in the same manner as if the proceedings were pending in such court.

**Source:** Laws 1925, c. 183, § 9, p. 483; C.S.1929, § 81-5509.

**81-511. Buildings; entry and inspection by State Fire Marshal; when authorized.** In the performance of the duties imposed by the provisions of sections 81-501.01 to 81-531, the State Fire Marshal and any of his subordinates, may, at all times of the day and night, enter upon and examine any building or premises where a fire is in progress or has occurred, and other buildings and premises adjoining or near thereto.

**Source:** Laws 1925, c. 183, § 10, p. 483; C.S.1929, § 81-5510.

**81-512. Buildings; entry and inspection; when authorized.** The State Fire Marshal, his or her first assistant, deputies, and subordinates, the chief of the fire department of each city or village where a fire department is established, the mayor of a city, the chairperson of the board of trustees of a village where no fire department exists, or the clerk of a township or the county commissioner of a commissioner district in territory without the limits of a city or village, at all reasonable hours, may enter into all buildings and upon all premises within his or her jurisdiction for the purposes of examination, in harmony with sections 81-501.01 to 81-531, the Nebraska Natural Gas Pipeline Safety Act of 1969, the Petroleum Products and Hazardous Substances Storage and Handling Act, and any other statutory duties imposed upon the State Fire Marshal.

**Source:** Laws 1925, c. 183, § 11, p. 483; C.S.1929, § 81-5511; R.S.1943, § 81-512; Laws 1993, LB 251, § 7. Effective date September 9, 1993.

**Cross References:** Nebraska Natural Gas Pipeline Safety Act of 1969, see section 81-552. Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.

**81-513. Buildings; condemnation or order to repair; conditions; power of State Fire Marshal; violation of order; penalty.** The State Fire Marshal may condemn and by order direct the destruction, repair, or alteration of any building or structure which by reason of age, dilapidated condition, defective chimneys, defective electric wiring, gas connections, heating apparatus, or other defect is especially liable to fire and which, in his or her judgment, is so situated as to endanger life or limb or other buildings or property in the vicinity. Before he or she condemns or orders the destruction, closing, or nonoccupancy of any building or structure owned by a governmental entity for any other cause than fire prevention, he or she shall be required to submit a written report from a building contractor, an architect, or a professional engineer stating the condition of the building and the reason why such building or structure should be condemned, destroyed, closed, or ordered to remain unoccupied, and a copy of the report shall be attached to the order. In case the order requires the repair of a building, the owner, lessee, or other person upon whom rests the duty to keep the structure in repair and upon whom such order is served shall make such repairs as are thereby directed within the limit of time stated in the order. The order, if considered necessary by the State Fire Marshal for the protection of life or property, may direct that the structure be closed and not further used or occupied until such repairs are made. Any person who shall willfully disobey the order directing the closing of such buildings, pending the making of such repairs, shall be guilty of a Class III misdemeanor. Each day such person shall neglect or refuse to obey the order shall be deemed a separate and distinct offense in violation thereof.

**Source:** Laws 1925, c. 183, § 12, p. 484; C.S.1929, § 81-5512; R.S.1943, § 81-513; Laws 1949, c. 280, § 1, p. 975; Laws 1977, LB 39, § 288; Laws 1988, LB 893, § 13; Laws 1993, LB 251, § 8; Laws 1997, LB 622, § 117.

**81-514. Buildings; exits and fire escapes.** Whenever the State Fire Marshal, upon inspection, shall find a building of such construction and use that the exits and means of egress already provided do not afford reasonably safe escape in case of fire for the number of people customarily within, he or she may order such exits to be opened and such means of escape to be provided as, in his or her judgment, are reasonably necessary to eliminate the danger arising therefrom. If considered necessary by the State Fire Marshal, the order may direct that the building be closed and not used or occupied until such exits and means of egress are provided. If increased exiting capacity does not correct overcrowded conditions, occupancy limits shall be strictly enforced.

**Source:** Laws 1925, c. 183, § 13, p. 484; C.S.1929, § 81-5513; R.S.1943, § 81-514; Laws 1988, LB 893, § 14. Effective date July 9, 1988.

**81-515. Buildings; condemnation or repair orders; filing in district court; enforcement.** The order shall be in writing, shall recite the grounds therefor, and shall be filed in the office of the clerk of the district court of the county in which the building or structure so ordered to be altered, repaired or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in said court.

**Source:** Laws 1925, c. 183, § 14, p. 485; C.S.1929, § 81-5514.

**81-516. Buildings; condemnation or repair orders; service upon owner and tenant.** A copy of the order filed in accordance with section 81-515 together with a written notice that the same has been so filed and will be put in force unless the owner or occupying tenant shall file with the clerk of said court his or her objections and answer thereto within the time specified in section 81-517, shall be served upon the owner of the building or structure so directed to be altered, repaired, or demolished, and if there be a tenant occupying the building, then also upon the occupant, which service shall be made upon such owner and tenant, if there be one, in the manner provided for

service of a summons in a civil action.

**Source:** Laws 1925, c. 183, § 15, p. 485; C.S.1929, § 81-5515; R.S.1943, § 81-516; Laws 1983, LB 447, § 94.

**81-517. Buildings; condemnation or repair orders; objections; how presented; hearing.** The owner of any building so condemned or any lessee upon whom such notice and order are served, within twenty days from the date of such service as herein provided, may file with the clerk of the court and serve upon the State Fire Marshal, by certified or registered mail, written objections to the order in the form of an answer denying the existence of any of the facts therein recited which he or she desires to controvert. If no answer is so filed and served, the owner and all other persons in interest shall be deemed to be in default, and thereupon the court shall affirm the order of condemnation and direct the State Fire Marshal to proceed with the enforcement thereof. If an answer is filed and served, the court shall hear and determine the issues so raised and give judgment thereon as herein provided.

**Source:** Laws 1925, c. 183, § 16, p. 485; C.S.1929, § 81-5516; R.S.1943, § 81-517; Laws 1987, LB 93, § 22. Effective date August 30, 1987.

**81-518. Buildings; condemnation or repair orders; time and place of hearing; jurisdiction of district court.**

The court, upon application of the State Fire Marshal, shall make its order fixing a time and place for such hearing, which place may be at any convenient point within the judicial district, and which time shall be within ten days from the date of the filing of the answer, or as soon thereafter as may be. If upon such trial the order shall be sustained, judgment shall be given accordingly, and fixing a time within which the building shall be altered, destroyed or repaired, as the case may be, in compliance with such order, but otherwise the court shall annul and set aside the order of condemnation.

**Source:** Laws 1925, c. 183, § 17, p. 486; C.S.1929, § 81-5517.

**81-519. Buildings; condemnation; demolition or repair by State Fire Marshal; when authorized; expense; collection.** If the owner or other party in interest shall fail to comply with the order of condemnation of a structure as hereinbefore provided, within the time fixed thereby, or within the time fixed by the court in case a trial is had therein, then the State Fire Marshal shall proceed to sell such building, structure and contents at public auction, to be demolished or repaired, in accordance with the direction contained in such order. The purchaser shall be required to comply with the directions contained in the order. In the event the State Fire Marshal is unable to sell such building, structure and contents the building, structure and contents shall become the property of the county in which the building exists and it shall be the duty of the county to comply with the directions contained in such order. All expenses incurred by the county in the demolition or repair of such building, structure and contents may be assessed as a special charge against the real estate on which such building or structure is or was situated and the same shall be collected in the same manner as other taxes.

**Source:** Laws 1925, c. 183, § 18, p. 486; C.S.1929, § 81-5518; R.S.1943, § 81-519; Laws 1969, c. 795, § 1, p. 3002.

**81-520. Buildings; fire hazards; abatement; penalty.** The State Fire Marshal or any deputy or inspector who finds in any building or upon or beneath any premises any combustibles or explosive material, rubbish, rags, waste, oil, gasoline, or inflammable matter of any kind endangering the safety of such building or property or the occupants thereof or the occupants of adjoining buildings shall order such materials removed or such dangerous condition abated within a specified time. Such order shall be in writing and directed generally to the owner, lessee, agent, or occupant of such building or premises, and any such owner, lessee, agent, or occupant upon whom such order shall be served who fails to comply with such order within the time prescribed in the order shall be guilty of a Class V misdemeanor. Such material may be removed or dangerous condition abated at the expense of the owner of such building and premises or the person upon whom such service is so made, or both, and the State Fire Marshal may maintain all necessary actions for the recovery thereof.

**Source:** Laws 1925, c. 183, § 19, p. 487; C.S.1929, § 81-5519; R.S.1943, § 81-520; Laws 1988, LB 893, § 15; Laws 1993, LB 251, § 9. Effective date September 9, 1993.

**81-520.01. Statewide open burning ban; waiver; permit; fee.**

- (1) There shall be a statewide open burning ban on all bonfires, outdoor rubbish fires, and fires for the purpose of clearing land.
- (2) The fire chief of a local fire department or his or her designee may waive an open burning ban under subsection (1) of this section for an area under his or her jurisdiction by issuing an open burning permit to a person requesting permission to conduct open burning. The permit issued by the fire chief or his or her designee to a person desiring to conduct open burning shall be in writing, signed by the fire chief or his or

her designee, and on a form prescribed by the State Fire Marshal. The State Fire Marshal shall provide local fire departments with such forms.

- (3) The fire chief of a local fire department or his or her designee may waive the open burning ban in his or her jurisdiction when conditions are acceptable to the chief or his or her designee. Anyone burning in such jurisdiction when the open burning ban has been waived shall notify the fire department of his or her intention to burn.
- (4) The fire chief of a local fire department may adopt and promulgate rules and regulations listing the conditions acceptable for issuing a permit to conduct open burning under subsection (2) of this section.
- (5) The local fire department may charge a fee, not to exceed ten dollars, for each such permit issued. This fee shall be remitted to the governing body for inclusion in the general funds allocated to the fire department. Such funds shall not reduce the tax requirements for the fire department. No such fee shall be collected from any state or political subdivision to which such a permit is issued to conduct open burning under subsection (2) of this section in the course of such state's or political subdivision's official duties.

**Source:** Laws 1980, LB 810, § 2; Laws 1982, LB 790, § 1; Laws 1994, LB 408, § 1. Effective date July 16, 1994.

**81-520.02. Open burning ban; range-management burning; violations; penalty.** Any person violating the statewide open burning ban established by section 81-520.01 or violating sections 81-520.03 to 81-520.05 shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1980, LB 810, § 3; Laws 1989, LB 19, § 1; Laws 1994, LB 408, § 2. Effective date July 16, 1994.

**81-520.03. Range-management burning, defined.** For purposes of sections 81-520.04 and 81-520.05, range-management burning shall mean the controlled application of fire to existing vegetative matter on land utilized for grazing.

**Source:** Laws 1994, LB 408, § 3. Effective date July 16, 1994.

**81-520.04. Range-management burning; permit; issuance; when.** The fire chief of a local fire department or his or her designee may waive an open burning ban under subsection (1) of section 81-520.01 by issuing a permit for range-management burning only if the range-management burning is to be conducted in accordance with section 81-520.05.

**Source:** Laws 1994, LB 408, § 4. Effective date July 16, 1994.

**81-520.05. Range-management burning; application for permit; plan; contents; fire chief; duties.**

- (1) A landowner, tenant, or other landowner's agent of the land where range-management burning is proposed shall file an application for a permit and a plan for conducting such burning. The plan shall include:
  - (a) The name of the landowner of the land on which range-management burning is to occur;
  - (b) The name of the person who will supervise the range-management burning if such person is different than the landowner;
  - (c) The land-management objective to be accomplished;
  - (d) A map showing the areas to be burned, including natural and manmade firebreaks;
  - (e) Procedures to be used to confine the fire in boundary areas without preexisting firebreaks;
  - (f) A list of equipment that will be on hand;
  - (g) The types and conditions of the vegetative matter to be burned on the land and in adjacent areas;
  - (h) Identification of roads and habitations that may be affected by smoke;
  - (i) A description of weather conditions believed to be required to safely and successfully conduct the range-management burning, including wind speed and direction, temperature, and relative humidity; and
  - (j) Such other information as may be prescribed by the fire chief of a local fire department.
- (2) The fire chief of a local fire department or his or her designee shall evaluate each plan to determine its compliance with subsection (1) of this section. If a plan fails to comply with all provisions of such subsection, a permit for range-management burning shall not be issued.
- (3) The fire chief of a local fire department or his or her designee shall issue a permit for range-management burning if (a) the plan complies with subsection (1) of this section and (b) the fire chief or his or her designee determines that range-management burning conducted in accordance with the plan would be conducted with due regard for the safety of people and property outside the burning areas. No permit shall be valid for more than thirty days.

**Source:** Laws 1994, LB 408, § 5. Effective date July 16, 1994.

**81-521. Fire insurance companies; reports to State Fire Marshal required; copies mailed to fire department of certain cities.** Every fire insurance company authorized to transact business in this state is required to report to the State Fire Marshal, through the secretary or other officer of the company designated by the board of directors for that purpose, all fire losses on property insured in any such company, giving the date of fire, the amount of probable loss, the character of property destroyed or damaged, and the supposed cause of the fire, together with the amount of insurance carried by such company. Such report shall be mailed to the State Fire Marshal within thirty days after notice of loss is received by such company. Each company is also required to report the amount of loss adjusted on each fire to the State Fire Marshal within thirty days after adjustment is made. Such report shall be in addition to any, and not in lieu of any, report or reports such companies may be required to make by any law of this state to the Director of Insurance; PROVIDED, that in the case of a fire of suspicious origin a preliminary report shall be made immediately through some officer of the insurance company showing the name of the assured, the date of fire, location, occupancy, and such facts and circumstances as shall come to his knowledge, tending to establish the cause or origin of the fire; AND PROVIDED FURTHER, that copies of the reports required by this section concerning any city of the metropolitan, primary, or first class shall be mailed by the insurance company concerned to the fire department of such city.

**Source:** Laws 1925, c. 183, § 20, p. 487; C.S.1929, § 81-5520; R.S.1943, § 81-521; Laws 1965, c. 550, § 1, p. 1799.

**81-522. Fires; failure of city or county authorities to investigate and report; penalty.** Any officer referred to in section 81-506 who neglects to comply with any of the requirements of sections 81-501.01 to 81-531 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1925, c. 183, § 21, p. 488; C.S.1929, § 81-5521; R.S.1943, § 81-522; Laws 1977, LB 39, § 289.

**81-523. State Fire Marshal; office; support and maintenance; tax on fire insurance companies; rate.**

- (1) For the purpose of maintaining the office of the State Fire Marshal and such other fire prevention activities as the Governor may direct, every foreign and alien insurance company including nonresident attorneys for subscribers to reciprocal insurance exchanges shall, on or before March 1, pay a tax to the Director of Insurance of three-fourths of one percent of the gross direct writing premiums and assessments received by each of such companies during the preceding calendar year for fire insurance business done in this state.
- (2) For the purpose set forth in subsection (1) of this section, every domestic insurance company including resident attorneys for subscribers to reciprocal insurance exchanges shall, on or before March 1, pay a tax to the Director of Insurance of three-eighths of one percent of the gross direct writing premiums and assessments received by each of such companies during the preceding calendar year for fire insurance business done in this state.
- (3) The term fire insurance business, as used in subsections (1), (2), and (4) of this section, shall include, but not be limited to, premiums of policies on fire risks on automobiles, whether written under floater form or otherwise.
- (4) Return premiums on fire insurance business, subject to the fire insurance tax, in accordance with subsections (1) and (2) of this section, may be deducted from the gross direct writing premiums for the purpose of the tax calculations provided for by subsections (1) and (2) of this section. In the case of mutual companies and assessment associations, the dividends paid or credited to policyholders or members in this state shall be construed to be return premiums.
- (5) Any tax collected pursuant to subsections (1) and (2) of this section shall be remitted to the State Treasurer for credit to the General Fund.
- (6) The State Treasurer shall transfer the entire balance in the Fire Insurance Tax Fund, including any investment income credited to the fund, to the State Fire Marshal Cash Fund, as soon as possible after April 14, 2004.

**Source:** Laws 1925, c. 183, § 22, p. 488; C.S.1929, § 81-5522; Laws 1933, c. 82, § 1, p. 330; C.S.Supp.,1941, § 81-5522; R.S.1943, § 81-523; Laws 1949, c. 281, § 1, p. 977; Laws 1953, c. 332, § 1, p. 1091; Laws 1957, c. 376, § 1, p. 1316; Laws 1979, LB 212, § 1; Laws 2003, LB 408, § 4; Laws 2004, LB 1091, § 14. Effective date April 14, 2004.

**Annotations:** Under former statute, fund created under its provisions could be paid out on proper warrants without legislative appropriation. State ex rel. Ridgell v. Hall, 99 Neb. 89, 155 N.W. 228 (1915), affirmed on rehearing 99 Neb. 95, 156 N.W. 16 (1916).

**81-524. State Fire Marshal; office; salaries; expenses; audit; payment.** The State Fire Marshal shall keep on file in his office an itemized statement of all salaries and expenses incurred by his office, and shall approve all vouchers issued therefor, before they are submitted to the Director of Administrative Services for payment, which shall be allowed and paid in the same manner as other claims against the state.

**Source:** Laws 1925, c. 183, § 23, p. 489; C.S.1929, § 81-5523.

**81-525. State Fire Marshal; records public; exceptions.** All records on file in the State Fire Marshal's office shall be public, except any testimony, correspondence, or other matter taken in an investigation or an inspection by, or in a report to, the State Fire Marshal under the provisions of the Nebraska Natural Gas Pipeline Safety Act of 1969 and sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157 which he or she in his or her discretion may withhold from the public.

**Source:** Laws 1925, c. 183, § 24, p. 489; C.S.1929, § 81-5524; R.S.1943, § 81-525; Laws 1969, c. 763, § 12, p. 2892; Laws 1993, LB 348, § 82. Operative date July 1, 1993.

**Cross Reference:** Nebraska Natural Gas Pipeline Safety Act of 1969, see section 81-552.

**81-526. State Fire Marshal; investigations; duty of county attorney to act.** The county attorney of any county, upon request of the State Fire Marshal, or his or her deputies or assistants, shall (1) assist such officers in the investigation of any fire which, in their opinion, is of suspicious origin and (2) act as attorney for such officers in all court proceedings in connection with the enforcement of sections 81-513 to 81-519 and the Petroleum Products and Hazardous Substances Storage and Handling Act when, in the exercise of a reasonable discretion, the county attorney shall determine that the evidence is sufficient to justify the bringing of such court proceedings.

**Source:** Laws 1925, c. 183, § 25, p. 489; C.S.1929, § 81-5525; R.S.1943, § 81-526; Laws 1945, c. 228, § 1, p. 675; Laws 1986, LB 217, § 13. Effective date July 17, 1986.

**81-527. State Fire Marshal; schools; exits; fire drills.** It shall be the duty of the State Fire Marshal and his or her deputies and assistants to require teachers of public and private schools and educational institutions to conduct regular fire drills in accordance with such rules and regulations as he or she may adopt and promulgate and to keep all doors and exits unlocked during school hours.

**Source:** Laws 1925, c. 183, § 26, p. 489; C.S.1929, § 81-5526; R.S.1943, § 81-527; Laws 1988, LB 893, § 16. Effective date July 9, 1988.

**81-528. State Fire Marshal Cash Fund; created; use; investment.**

- (1) The State Fire Marshal Cash Fund is created. Money collected pursuant to subsections (2) and (3) of this section shall be remitted to the State Treasurer for credit to the fund. The fund shall be used to pay for costs incurred in the general operations program of the State Fire Marshal's office. The fund shall be administered by the State Fire Marshal. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.
- (2) All money received from inspection contracts, penalties, fees, or forfeitures, except fines collected under sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157, shall be remitted to the State Treasurer for credit to the fund.
- (3) All fees assessed pursuant to section 81-505.01 for services performed by the State Fire Marshal's office shall be remitted to the State Treasurer for credit to the fund.

**Source:** Laws 1925, c. 183, § 27, p. 489; C.S.1929, § 81-5527; R.S.1943, § 81-528; Laws 1969, c. 584, § 97, p. 2407; Laws 1973, LB 120, § 1; Laws 1983, LB 498, § 8; Laws 1993, LB 348, § 83; Laws 1994, LB 1066, § 99; Laws 2004, LB 1091, § 15. Effective date April 14, 2004.

**Cross References:** Nebraska Capital Expansion Act, see section 72-1269. Nebraska State Funds Investment Act, see section 72-1260.

**81-529. Sections, how construed.** It is declared that sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157 are in nature necessary for the public safety, health, peace, and welfare and shall be liberally construed.

**Source:** Laws 1925, c. 183, § 28, p. 490; C.S.1929, § 81-5528; R.S.1943, § 81-529; Laws 1993, LB 348, § 84.

**81-531. Fire chiefs; local officers; fire reports; compensation; mileage.**

- (1) There shall be paid to the chiefs of fire departments and mayors of cities who do not receive to exceed fifty dollars annually as compensation for their services as such chiefs or mayors, to chairpersons of the village

boards, to the township clerks of every organized township, and to county commissioners in counties not under township organization, who are required by section 81-506 to report fires to the State Fire Marshal, the sum of one dollar for each fire reported to the satisfaction of the State Fire Marshal, and, in addition thereto, mileage at the rate allowed by the provisions of section 81-1176 for each mile traveled from the officers' domicile to and from the place of fire when such mileage is compulsory to investigate the cause of fire by county commissioners or sheriffs but not by fire chiefs. This allowance shall be paid by the State Fire Marshal at the close of each fiscal year out of any funds provided for the use of the office of the State Fire Marshal.

- (2) All chiefs of fire departments who receive a stated salary and devote their entire time to the duties of their respective fire departments, and those mayors of cities who receive a stated salary exceeding fifty dollars as such officers, shall be precluded from receiving any extra allowance for the report mentioned in subsection (1) of this section.

**Source:** Laws 1925, c. 183, § 30, p. 490; C.S.1929, § 81-5530; Laws 1933, c. 96, § 16, p. 396; C.S. Supp., 1941, § 81-5530; R.S.1943, § 81-531; Laws 1957, c. 70, § 9, p. 301; Laws 1996, LB 1011, § 34. Effective date July 19, 1996.

**81-534. Hotels and apartments more than fifty-five feet in height; standpipes; specifications.** Every hotel building, rooming house or apartment house, exceeding fifty-five feet and not over one hundred feet in height, unless already provided with a three-inch or larger standpipe on the outside, shall be provided with a vertical standpipe of not less than four inches in diameter. For every hotel, rooming house or apartment house building exceeding one hundred feet in height, unless already provided with a four-inch or larger standpipe, there shall be provided a vertical standpipe not less than six inches in diameter. Such standpipes shall be of wrought iron or steel and, together with fittings and connections, shall be of such strength as to safely withstand at least three hundred pounds of water pressure to the square inch when installed and ready for service. Such standpipes shall have one hose valve on the roof and a hose valve at each floor opening, with double Siamese automatic valves at the bottom, about one foot above the curb level and adjusted looking down at an angle of forty-five degrees. All valve openings shall be of brass protected by a substantial brass cap, and all fittings and threads shall be of the size and form to fit regulation fire department hose. Such standpipes shall, where possible, be attached to the fire escape with iron ladder, for use of firemen, running the full height of the building and over the roof, and all hose connections shall be toward the building. This section shall not apply in cities or villages not equipped with waterworks and firefighting equipment suitable for using vertical standpipe.

**Source:** Laws 1919, c. 190, tit. V, art. XXI, § 10, p. 747; C.S.1922, § 8154; C.S.1929, § 81-5533.

**81-538. Violations; penalty.** Anyone violating any of the provisions of sections 81-501.01 to 81-534, for which no other specific penalty is provided, shall be deemed guilty of a Class V misdemeanor, and each day's noncompliance shall constitute a separate offense.

**Source:** Laws 1919, c. 190, tit. V, art. XXI, § 14, p. 749; C.S.1922, § 8158; C.S.1929, § 81-5537; R.S.1943, § 81-538; Laws 1947, c. 313, § 2, p. 950; Laws 1977, LB 39, § 290; Laws 1980, LB 810, § 1; Laws 1985, LB 40, § 1. Effective date September 6, 1985.

**81-541.01. High-rise building fire code; adoption; State Fire Marshal; duties.** The State Fire Marshal shall not later than April 1, 1982, adopt and promulgate rules and regulations establishing a high-rise building fire code. Such code shall apply to all new and existing office buildings and all new and existing residential buildings with floors located more than five stories or seventy-five feet above the lowest level of access by a fire department vehicle. New buildings shall mean buildings on which construction commences after the effective date of the code and existing buildings shall mean buildings on which construction has commenced on or before the effective date of the code. Existing buildings shall comply with the code on or before April 1, 1984. The code shall make distinctions between the standards set for new buildings and those set for existing buildings. Such rules and regulations may include, but not be limited to, provisions for the following:

- (1) A complete automatic sprinkler system or an approved alternate system;
- (2) A smoke detection system;
- (3) An alarm, communication, and central control system;
- (4) Areas of refuge;
- (5) Appropriate fire safety features for elevator systems;
- (6) Appropriate emergency, and standby power and light systems; and
- (7) Fire control devices for mechanical systems, including but not limited to, automatic shutdowns and fire dampers.

Such code shall conform generally with sections 1807 and 1907 and other related provisions, including sections



103, 104, 105, 106, and 502 of the Uniform Building Code published by the International Conference of Building Officials, 1979 edition, as it exists on August 30, 1981. The code adopted pursuant to this section shall constitute a minimum standard in Nebraska and local codes may be more restrictive.

**Source:** Laws 1981, LB 266, § 1.

## Nebraska Natural Gas Pipeline Safety Act

**81-542. Terms, defined.** For purposes of the Nebraska Natural Gas Pipeline Safety Act of 1969 unless the context otherwise requires:

- (1) The Natural Gas Pipeline Safety Act of 1968 of the United States shall mean Public Law 90-481, 82 Stat. 720, 90th Congress, S. 1166, enacted August 12, 1968;
- (2) State Fire Marshal shall mean the officer appointed pursuant to section 81-501.01;
- (3) Person shall mean any individual, firm, joint venture, partnership, limited liability company, corporation, association, municipality, cooperative association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof;
- (4) Gas shall mean natural gas, flammable gas, or gas which is toxic or corrosive and which is transported in a gaseous form and not in a liquid form;
- (5) Transportation of gas shall mean the gathering, transmission, or distribution of gas by pipeline or its storage, except that it shall not include any such transportation of gas which is subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act of the United States or the Interstate Commerce Commission under the Interstate Commerce Act or the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the State Fire Marshal may define as a nonrural area; and
- (6) Pipeline facilities shall include, without limitation, new and existing pipe rights-of-way and any equipment facility or building used in the transportation of gas or the treatment of gas during the course of transportation but rights-of-way as used in the Nebraska Natural Gas Pipeline Safety Act of 1969 does not authorize the State Fire Marshal to prescribe the location or routing of any pipeline facility. Pipeline facilities shall not include any facilities subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act of the United States or the Interstate Commerce Commission under the Interstate Commerce Act.

**Source:** Laws 1969, c. 763, § 1, p. 2884; Laws 1993, LB 121, § 527. Effective date September 9, 1993.

**81-543. State Fire Marshal; safety standards for transportation of gas and operation of pipeline facilities; adopt.**

- (1) After June 12, 1969, and from time to time thereafter, and pursuant to the Administrative Procedure Act, the State Fire Marshal shall, by order, establish minimum safety standards for the transportation of gas and pipeline facilities. Such standards may apply to the design, installation, inspection, testing, construction, extension, operation, replacement and maintenance of pipeline facilities. Standards affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable to pipeline facilities in existence on the date such standards are adopted. Such safety standards shall be practicable and designed to meet the need for pipeline safety. In prescribing such standards, the State Fire Marshal shall consider:
  - (a) Relevant available pipeline safety data;
  - (b) Whether such standards are appropriate for the particular type of pipeline transportation;
  - (c) The reasonableness of any proposed standards;
  - (d) The extent to which any such standards will contribute to public safety; and
  - (e) The existing standards established by the United States Secretary of Transportation pursuant to the Natural Gas Pipeline Safety Act of 1968 of the United States and the Interstate Commerce Act.
- (2) Any standards prescribed under this section, and amendments thereto, shall become effective thirty days after the date of issuance of such standards unless the State Fire Marshal, for good cause recited, determines an earlier or later effective date is required as the result of the period reasonably necessary for compliance.
- (3) The State Fire Marshal shall afford interested persons an opportunity to participate fully in the establishment of such safety standards through submission of written data, views, or arguments with opportunity to present oral testimony and argument.
- (4) Whenever the State Fire Marshal shall find a particular facility to be hazardous to life or property he shall be empowered to require the person operating such facility to take such steps necessary to remove such hazards.

- (5) Upon application by any person engaged in the transportation of gas or the operation of pipeline facilities, the State Fire Marshal may, after notice and opportunity for hearing and under such terms and conditions and to such extent as he deems appropriate, waive in whole or in part compliance with any standards established under this act, if he determines that a waiver of compliance with such standard is not inconsistent with gas pipeline safety. The State Fire Marshal shall state his reasons for any such waiver.  
**Source:** Laws 1969, c. 763, § 2, p. 2886.

**81-544. State Fire Marshal; certifications and reports; United States Secretary of Transportation.** The State Fire Marshal is authorized to make such certifications and reports to the United States Secretary of Transportation as may be required from time to time under the Natural Gas Pipeline Safety Act of 1968 of the United States.  
**Source:** Laws 1969, c. 763, § 3, p. 2887.

**81-545. Transportation of gas; operation of pipeline facilities; safety standards; requirements.**

- (1) Each person who engages in the transportation of gas or who owns or operates pipeline facilities shall
- (a) at all times after the date any applicable safety standard established under this act takes effect comply with the requirements of such standard;
  - (b) file and comply with a plan of inspection and maintenance required by section 81-548; and
  - (c) permit access to or copying of records, and make reports or provide information, and permit entry or inspection, as required under section 81-549.
- (2) Nothing in this act shall affect the common-law or statutory tort liability of any person.  
**Source:** Laws 1969, c. 763, § 4, p. 2887.

**81-546. Violations; notice; failure to comply; penalty.**

- (1) Whenever the State Fire Marshal has reason to believe any person is violating any provision of subsection (1) of section 81-545 or any regulation under the Nebraska Natural Gas Pipeline Safety Act of 1969, the State Fire Marshal shall give notice to such person and permit such person reasonable opportunity to achieve compliance. If compliance has not been achieved in a reasonable time, the State Fire Marshal may request the Attorney General to bring an action under section 81-547 in the district court for the county in which the defendant's principal place of business is located, and the district court may impose a civil penalty of not to exceed ten thousand dollars for each violation for each day that such violation persists, except that the maximum civil penalty shall not exceed five hundred thousand dollars for any related series of violations.
- (2) In determining the amount of such penalty, the court shall consider the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged. The amount of such penalty, when finally determined, may be deducted from any sums owing by the State of Nebraska to the person charged.  
**Source:** Laws 1969, c. 763, § 5, p. 2887; Laws 1993, LB 49, § 1. Effective date September 9, 1993.

**81-547. Violations; district court; jurisdiction.**

- (1) The district courts shall have jurisdiction to restrain violations of this act, including the restraint of transportation of gas or the operation of a pipeline facility, or to enforce standards established hereunder upon petition by the Attorney General on behalf of the State of Nebraska. Whenever practicable, the State Fire Marshal shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance. The failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.
- (2) Actions under subsection (1) of this section and section 81-546 shall be brought in the county in the State of Nebraska in which the defendant's principal place of business is located, and process in such cases may be served in any other county in the State of Nebraska where the defendant may be found or in which the defendant is an inhabitant or transacts business.  
**Source:** Laws 1969, c. 763, § 6, p. 2888.

**81-548. Transportation of gas; operation of pipeline facilities; plan for inspection and maintenance; file with State Fire Marshal; adequacy of plan.** Each person who engages in the transportation of gas or who owns or operates pipeline facilities subject to this act shall file with the State Fire Marshal a plan for inspection and maintenance of each such pipeline facility owned or operated by such person, and any changes in such plan, in

accordance with the regulations prescribed by the State Fire Marshal. If at any time the State Fire Marshal finds that such plan is inadequate to achieve safe operation, he shall, after notice and opportunity for a hearing, require such plan to be revised. The plan required by the State Fire Marshal shall be practicable and designed to meet the need for pipeline safety. In determining the adequacy of any such plan, the State Fire Marshal shall consider:

- (1) Relevant available pipeline safety data;
- (2) Whether the plan is appropriate for the particular type of pipeline transportation;
- (3) The reasonableness of the plan; and
- (4) The extent to which such plan will contribute to public safety.

**Source:** Laws 1969, c. 763, § 7, p. 2888.

**81-549. Records; reports; inspection.**

- (1) Each person who engages in the transportation of gas or who owns or operates pipeline facilities shall establish and maintain such records, make such reports, and provide such information as the State Fire Marshal may reasonably require to enable him to determine whether such person has acted or is acting in compliance with this act and the standards established under this act. Each such person shall, upon request of an officer, employee, or agent authorized by the State Fire Marshal, permit such officer, employee, or agent to inspect books, papers, records, and documents relevant to determining whether such person has acted or is acting in compliance with this act and the standards established pursuant to this act. For purposes of enforcement of this act, officers, employees, or agents authorized by the State Fire Marshal, upon presenting appropriate credentials to the individual in charge, are authorized
  - (a) to enter upon, at reasonable times, pipeline facilities, and
  - (b) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such facilities. Each such inspection shall be commenced and completed with reasonable promptness.
- (2) In the course of the exercise of his duties and responsibilities under this act, the State Fire Marshal shall wherever practicable employ a practice of spot checking and issuance of certificates of compliance, with respect to persons subject to this act, to limit costs of enforcement of the safety standards established pursuant to section 81-543.
- (3) All information reported to or otherwise obtained by the State Fire Marshal or his representative pursuant to subsection (1) of this section, which information contains or relates to a trade secret as referred to in 18 U.S.C. 1905, or otherwise constituting a trade secret under law, shall be considered confidential for the purpose of such laws, except that such information may be disclosed to other officers or employees concerned with carrying out this act or when relevant in any proceeding under this act.

**Source:** Laws 1969, c. 763, § 8, p. 2889; Laws 1992, LB 858, § 1.

**81-550. Nebraska Natural Gas Pipeline Safety Cash Fund; created; use; investment; assessments.**

- (1) The Nebraska Natural Gas Pipeline Safety Cash Fund is created. The fund shall consist of money received from assessments pursuant to this section which shall be remitted to the State Treasurer for credit to the fund. The fund shall only be used for purposes of administering the Nebraska Natural Gas Pipeline Safety Act of 1969. The fund shall be administered by the State Fire Marshal. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.
- (2) To defray the cost of administering the Nebraska Natural Gas Pipeline Safety Act of 1969, the State Fire Marshal shall on March 1 of each year make an assessment against persons having pipeline facilities in this state subject to the act, which assessment shall be paid within thirty days thereafter.
- (3) The assessment against each such person shall be based on the number of meters such person has in service for the retail sale of gas in this state at the end of the calendar year next preceding such assessment. The amount of such assessment shall be set by the State Fire Marshal in an amount not to exceed twenty cents multiplied by the number of such meters for each such person.
- (4) It shall be the duty of the State Fire Marshal to make timely application each year to the United States Government for the maximum funds to which this state may be entitled from the United States Government for the administration of the act.

**Source:** Laws 1969, c. 763, § 9, p. 2890; Laws 1977, LB 410, § 1; Laws 1983, LB 383, § 1; Laws 1992, LB 858, § 2; Laws 2004, LB 1091, § 16; Effective date April 14, 2004.

**Cross References:** Nebraska Capital Expansion Act, see section 72-1269. Nebraska State Funds Investment Act, see section 72-1260.

**81-551. State Fire Marshal; duties; powers.** The duties and powers of the State Fire Marshal and of his or her deputies and assistants prescribed in sections 81-509 to 81-523, 81-526, 81-527, 81-531 to 81-538, and 81-5,151

to 81-5,157 and the Petroleum Products and Hazardous Substances Storage and Handling Act shall not be applicable to the Nebraska Natural Gas Pipeline Safety Act of 1969.

**Source:** Laws 1969, c. 763, § 13, p. 2892; Laws 1986, LB 217, § 14; Laws 1988, LB 893, § 17; Laws 1993, LB 348, § 85

**Cross References:** Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.

**81-552. Act, how cited.** Sections 81-542 to 81-550 may be cited as the Nebraska Natural Gas Pipeline Safety Act of 1969.

**Source:** Laws 1969, c. 763, § 14, p. 2892.

## Arson Reporting Immunity Act

**81-5,115. Act, how cited.** Sections 81-5,115 to 81-5,131 shall be known and may be cited as the Arson Reporting Immunity Act.

**Source:** Laws 1979, LB 301, § 1.

**81-5,116. Definitions; sections found.** For purposes of sections 81-5,115 to 81-5,131, unless the context otherwise requires, the definitions found in sections 81-5,117 to 81-5,120 shall be used.

**Source:** Laws 1979, LB 301, § 2.

**81-5,117. Authorized agency, defined.** Authorized agency shall mean:

- (1) The State Fire Marshal or any local fire department investigation division when authorized or charged with the investigation of fires or explosions at the place where the fire or explosion actually took place;
- (2) The colonel of the Nebraska State Patrol;
- (3) The county attorney responsible for prosecutions in the county where the fire or explosion occurred; and
- (4) A local law enforcement agency in the county where the fire or explosion occurred.

**Source:** Laws 1979, LB 301, § 3.

**81-5,118. Relevant, defined.** Relevant shall mean information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.

**Source:** Laws 1979, LB 301, § 4.

**81-5,119. Action, defined.** Action shall include nonaction or the failure to take action.

**Source:** Laws 1979, LB 301, § 5.

**81-5,120. Immune, defined.** Immune shall mean that neither a civil action nor a criminal prosecution may arise from any action taken pursuant to sections 81-5,115 to 81-5,131 when actual malice on the part of an insurance company or authorized agency against the insured is not present.

**Source:** Laws 1979, LB 301, § 6.

**81-5,121. Authorized agency; fire or explosion loss; access to information.** Any authorized agency may, in writing, require the insurance company at interest to release to the requesting agency any or all relevant information or evidence deemed important to the authorized agency which the company may have in its possession relating to the fire loss or explosion loss in question. Authorized agency for the purpose of this section shall mean, in addition to agencies included under section 81-5,117, the Federal Bureau of Investigation, any other federal agency, and the United States Attorney's office when authorized or charged with investigation or prosecution of a fire or explosion.

**Source:** Laws 1979, LB 301, § 7.

**81-5,122. Request for information; subject matter.** The request for information under section 81-5,121 may include, but shall not be limited to:

- (1) Pertinent insurance policy information relevant to a fire loss or explosion loss under investigation and any application for such a policy;
- (2) Policy premium payment records which are available;
- (3) History of previous claims made by the insured; and
- (4) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other evidence relevant to the investigation.

**Source:** Laws 1979, LB 301, § 8.

**81-5,123. Fire or explosion loss; investigation; when.** When an insurance company has reason to believe that a fire loss or explosion loss in which it has an interest may be of other than accidental cause, the company shall, in writing, notify the State Fire Marshal or any local fire department investigation division and request an investigation. The company shall provide the State Fire Marshal or any local fire department investigation division with any or all material developed from the company's inquiry into the fire loss or explosion loss. If an insurance company provides the State Fire Marshal or any local fire department investigation division with notice of a fire loss or explosion loss, such notice shall be sufficient for the purpose of sections 81-5,115 to 81-5,131.

**Source:** Laws 1979, LB 301, § 9.

**81-5,124. Authorized agency; information; release; to whom.** The authorized agency provided with information pursuant to section 81-5,121 or 81-5,123 and in furtherance of its own purposes may release or provide such information to any of the other authorized agencies.

**Source:** Laws 1979, LB 301, § 10.

**81-5,125. Insurance company; relevant information; receive; when.** Any insurance company providing information to an authorized agency or agencies pursuant to section 81-5,121 or 81-5,123 shall have the right to request relevant information and receive, within a reasonable time not to exceed thirty days, the information requested.

**Source:** Laws 1979, LB 301, § 11.

**81-5,126. Insurance company; releasing information; immune from liability.** Any insurance company, a person acting in its behalf, or an authorized agency releasing information, whether oral or written, pursuant to section 81-5,121 or 81-5,123 shall be immune from any liability arising out of a civil action or penalty resulting from a criminal prosecution.

**Source:** Laws 1979, LB 301, § 12.

**81-5,127. Authorized agency; insurance company; information; confidentiality; testimony.**

- (1) Any authorized agency or insurance company which receives any information, furnished pursuant to sections 81-5,115 to 81-5,131, shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding.
- (2) Any authorized agency or its personnel may be required to testify in any litigation in which the insurance company at interest is named as a party.

**Source:** Laws 1979, LB 301, § 13.

**81-5,128. Information; refusal to release; prohibited.** No person or agency shall intentionally or knowingly refuse to release any information requested pursuant to section 81-5,121 or 81-5,124.

**Source:** Laws 1979, LB 301, § 14.

**81-5,129. Relevant information; refusal to provide; prohibited.** No person shall intentionally or knowingly refuse to provide authorized agencies relevant information pursuant to section 81-5,123.

**Source:** Laws 1979, LB 301, § 15.

**81-5,130. Confidential information; release; prohibited.** No person shall fail to hold in confidence information required to be held in confidence by section 81-5,127.

**Source:** Laws 1979, LB 301, § 16.

**81-5,131. Violations; penalties.** Any person violating sections 81-5,128 to 81-5,130 shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1979, LB 301, § 17.

## Smoke Detectors

**81-5,132. Definitions, sections found.** As used in sections 81-5,132 to 81-5,146, unless the context otherwise requires, the definitions found in sections 81-5,133 to 81-5,139 shall apply.

**Source:** Laws 1981, LB 296, § 1.

**81-5,133. Apartment house, defined.** Apartment house shall mean any building which is occupied as the home or residence of three or more families or persons living independently of each other and doing their own cooking in the building, and such term shall include buildings containing three or more apartments.

**Source:** Laws 1981, LB 296, § 2.

**81-5,134. Dwelling, defined.** Dwelling shall mean any building which is not an apartment house, lodging house, hotel, or mobile home and which contains one or two dwelling units which are, or are intended or designed to be, occupied for living purposes.

**Source:** Laws 1981, LB 296, § 3.

**81-5,135. Dwelling unit, defined.** Dwelling unit shall mean a single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation, or a single unit used by one or more persons for sleeping and sanitation pursuant to a work practice or labor agreement.

**Source:** Laws 1981, LB 296, § 4.

**81-5,136. Hotel, defined.** Hotel shall mean any building, or portion thereof, containing six or more guest rooms intended or designed to be used, or which are used, rented, or hired out to be occupied, or which are occupied for sleeping purposes by guests.

**Source:** Laws 1981, LB 296, § 5.

**81-5,137. Lodging house, defined.** Lodging house shall mean any building, or portion thereof, containing not more than five guest rooms which are used or are intended to be used for sleeping purposes by guests and for which rent is paid in money, goods, labor, or otherwise.

**Source:** Laws 1981, LB 296, § 6.

**81-5,138. Mobile home, defined.** Mobile home shall mean every transportable or relocatable device of any description containing complete independent living facilities for one or more persons whether or not permanently attached to the real estate upon which it is situated and shall include a manufactured home as defined in section 71-4603.

**Source:** Laws 1981, LB 296, § 7; Laws 1985, LB 313, § 27. Effective date September 6, 1985.

**81-5,139. Remodeled, defined.** Remodeled shall mean the alteration or reconstruction of an existing building for which a building permit is required to be obtained by the local political subdivision.

**Source:** Laws 1981, LB 296, § 8.

**81-5,140. Certain mobile homes and modular housing units; exemption.** Notwithstanding any other provision of sections 81-5,132 to 81-5,146, mobile homes constructed after September 27, 1975, and modular housing units constructed pursuant to sections 71-1555 to 71-1567 after January 10, 1977, shall be exempt from the requirements of sections 81-5,132 to 81-5,146.

**Source:** Laws 1981, LB 296, § 9; Laws 1985, LB 313, § 28. Effective date September 6, 1985.

**81-5,141. State Fire Marshal; adopt rules and regulations; administer act; investigate violations.** The State Fire Marshal shall adopt and promulgate rules and regulations for the administration of sections 81-5,132 to 81-5,146, including the placement of smoke detectors in dwellings, apartment houses, hotels, lodging houses, dormitories, and mobile homes. The rules and regulations shall take into account designs of the guest rooms, dwelling units, dormitories, and mobile homes. The State Fire Marshal may consider the requirements for smoke detectors developed by any national testing laboratory in adopting such rules and regulations. The State Fire Marshal shall administer the provisions of sections 81-5,132 to 81-5,146 and may delegate such responsibility to his or her authorized representative or the appropriate official charged with the duty of providing fire protection services within the local jurisdiction. The State Fire Marshal or his or her representative or the appropriate official may investigate any alleged violation of sections 81-5,132 to 81-5,146 and shall report such investigative findings



to the county attorney who shall proceed to enforce the provisions of sections 81-5,132 to 81-5,146.

**Source:** Laws 1981, LB 296, § 10.

**81-5,142. Smoke detectors; installation required; when.**

- (1) Every dwelling unit within a dwelling or apartment house constructed or remodeled on or after January 1, 1982, every guest room in a lodging house or hotel constructed or remodeled on or after January 1, 1982, and every dormitory constructed or remodeled on or after January 1, 1982, shall be provided with one or more operating smoke detectors meeting the requirements of the State Fire Marshal's rules and regulations.
- (2) Every guest room in a lodging house or hotel constructed prior to January 1, 1982, and every dormitory constructed prior to January 1, 1982, shall be provided with one or more operating smoke detectors meeting the requirements of the State Fire Marshal's rules and regulations on or before January 1, 1984.
- (3) Every
  - (a) dwelling unit within a dwelling or apartment house constructed prior to January 1, 1982,
  - (b) mobile home, and
  - (c) modular housing unit constructed pursuant to sections 71-1555 to 71-1567 shall be provided with one or more operating smoke detectors meeting the requirements of the State Fire Marshal's rules and regulations at the time of their remodeling or sale. In the event of a sale, the provision of smoke detectors shall be the sole responsibility of the seller, which responsibility shall not be assigned or imputed to any other party or the agent of any party to the sale.

**Source:** Laws 1981, LB 296, § 11; Laws 1985, LB 313, § 29. Effective date September 6, 1985.

**81-5,143. Smoke detector; number; location; operation.** The detector shall be mounted in accordance with the rules and regulations regarding the number and location of smoke detectors adopted by the State Fire Marshal. When activated, the detector shall provide an alarm in the dwelling unit, guest room, dormitory, or mobile home.

**Source:** Laws 1981, LB 296, § 12.

**81-5,144. Smoke detector; rental property; responsibility for installing, maintaining.**

- (1) Except as provided in subsection (2) of this section, the owner of every apartment house, dwelling, hotel, lodging house, dormitory, or mobile home or the owner's authorized agent shall be responsible for supplying, installing, maintaining, and testing the smoke detectors.
- (2) In the case of a dwelling unit, guest room, hotel room, or mobile home which is being occupied for one month or more by the same occupant, it shall be the responsibility of such occupant to perform the tests on the smoke detector as are recommended by the manufacturer's instructions and immediately notify, in writing, the owner or authorized agent of any deficiencies. The owner of the dwelling, apartment house, lodging house, hotel, or mobile home shall provide a notice to such occupant containing instructions for the testing of the device. For purposes of this subsection, deficiencies shall not include a worn battery or other replaceable energy unit. The occupant shall be responsible for replacement of the battery or unit, except that such battery or unit shall be in operating condition at the time the occupant takes possession. The owner or authorized agent shall correct any reported deficiencies in the smoke detector and shall not be in violation of sections 81-5,132 to 81-5,146 for a deficient smoke detector when he or she has not received notice of the deficiency.
- (3) This section shall apply solely to rental property.

**Source:** Laws 1981, LB 296, § 13.

**81-5,145. Political subdivisions; smoke detector standards; restrictions.** Sections 81-5,132 to 81-5,146 shall prohibit a political subdivision from adopting standards less stringent than those provided in sections 81-5,132 to 81-5,146 and rules and regulations adopted under sections 81-5,132 to 81-5,146, except that, as to buildings constructed on or after January 1, 1982, such political subdivision shall require that smoke detectors be attached to a centralized electrical power source within the building which may be equipped with a battery as an alternate power source. No political subdivision shall require that a smoke detector be attached to a centralized power source within a building constructed prior to January 1, 1982.

**Source:** Laws 1981, LB 296, § 14.

**81-5,146. Violations; penalty.** Any person violating the provisions of sections 81-5,132 to 81-5,146 shall be guilty of a Class V misdemeanor.

**Source:** Laws 1981, LB 296, § 15.

## State Accessibility Standards

**81-5,147. Buildings and facilities; standards, specifications, and exclusions; adoption.** The State Fire Marshal shall adopt and promulgate:

- (1) Standards, specifications, and exclusions which are consistent with the most current uniform guidelines and standards set by the federal Americans with Disabilities Act of 1990, as amended, for
  - (a) buildings and facilities which are newly constructed for first occupancy and
  - (b) alterations of existing buildings and facilities used by the public. For purposes of this section, alterations of an existing building or facility used by the public shall include remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangements in the plan or configuration of the height of walls or partitions. Normal maintenance, reroofing, painting, wallpapering, asbestos removal, or changes to mechanical and electrical systems shall not be considered alterations; and
- (2) Standards and specifications which are consistent with the most current uniform guidelines and standards set by the federal Fair Housing Act of 1968, as adopted by the State of Nebraska, for new constructed covered multifamily dwellings as defined in section 20-319.

**Source:** Laws 1974, LB 602, § 13; R.S.1943, (1990), § 72-1122; Laws 1993, LB 377, § 3; Laws 1998, LB 1073, § 160; Laws 2002, LB 93, § 22. Effective date July 20, 2002.

**81-5,148. Enforcement of standards and specifications; responsibility; failure to comply; effect.** The responsibility for enforcement of the standards and specifications adopted pursuant to section 81-5,147 for

- (1) buildings and facilities which are newly constructed for first occupancy,
- (2) alterations of existing buildings and facilities used by the public, and
- (3) new constructed covered multifamily dwellings as defined in section 20-319 shall lie with the State Fire Marshal or the appropriate officials of the governing bodies of the state government and its political subdivisions responsible for the review and approval of the building plans. Enforcement responsibility includes an appeal process conducted by the enforcing authority for the appeal of any enforcement action or proposed enforcement action.

With respect to the enforcement of section 81-5,147 as described in subdivisions (1) and (2) of this section, when plans are being reviewed for both building code and fire code regulations, the officials responsible for building code review shall be responsible for enforcement of section 81-5,147. With respect to the enforcement of section 81-5,147 as described in subdivision (3) of this section, when plans are being reviewed for both building code and fire code regulations, the officials in a city of the metropolitan, primary, or first class shall be responsible for enforcement of section 81-5,147. Officials in a city of the second class or village shall not be responsible for enforcement of section 81-5,147 as described in subdivision (3) of this section if such officials have submitted to the State Fire Marshal a written statement declaring their intent not to assume responsibility for such enforcement. When plans are being reviewed solely for fire code regulations or when the officials responsible for building code review have submitted such a written statement, the State Fire Marshal or his or her designee shall be responsible for enforcement of section 81-5,147. No official of any governing body of the state government or its political subdivisions responsible for such enforcement shall approve or authorize an occupancy permit unless such building, facility, or dwelling complies with the standards and specifications prescribed by such section. Any unauthorized departure from the standards and specifications established by the State Fire Marshal pursuant to such section may be corrected by full compliance with such standards and specifications within one hundred eighty days after discovery of such departure. Failure to correct an unauthorized departure from such standards and specifications shall result in denial or revocation of the occupancy permit for the building, facility, or dwelling.

**Source:** Laws 1965, c. 430, § 19, p. 1377; Laws 1974, LB 602, § 10; Laws 1976, LB 986, § 1; Laws 1977, LB 473, § 1; Laws 1988, LB 646, § 1; R.S.1943, (1990), § 72-1119; Laws 1993, LB 377, § 4; Laws 1998, LB 1073, § 161. Operative date October 1, 1998.

**81-5,149.** Repealed. Laws 2002, LB 93, s. 27.

**81-5,150.** Repealed. Laws 2002, LB 93, s. 27.

## Training Division

**81-5,151. Training division; established; purpose; State Fire Marshal; powers and duties.**

The State Fire Marshal shall establish a training division for purposes of operating a statewide training program for fire department personnel, others involved in fire safety training, and other emergency responders that may require specialized training available from the training program for the purposes of developing, maintaining, and updating fire department skills and other skills of those emergency responders requiring specialized training available from the training program. The State Fire Marshal in establishing a training division shall

- (1) conduct training,
- (2) certify fire department personnel,
- (3) give technical assistance to fire departments and other emergency responders requiring specialized training available from the training program, and
- (4) conduct live fire training. The State Fire Marshal in establishing such training may also give technical assistance to rescue squads and respond to emergencies upon request for technical assistance. Fees for manuals and training shall be collected pursuant to section 81-5,152. Nothing in this section shall require mandatory participation by fire departments, individuals, or others interested in fire safety training or other specialized training available from the training program.

**Source:** Laws 1980, LB 724, § 2; R.S.1943, (1987), § 79-1430; Laws 1993, LB 348, § 86.

Operative date July 1, 1993.

**81-5,152. Training program; fees.** The training program as set out in section 81-5,151 for volunteer fire departments and career fire departments shall be free, except that the State Fire Marshal may charge for such books and materials given to the students, testing, or specialized courses.

The State Fire Marshal may charge a fee for providing to private fire departments training, books, materials, testing, or specialized courses.

The State Fire Marshal shall charge a fee for providing to industrial fire brigades training, books, materials, testing, and specialized courses.

**Source:** Laws 1993, LB 348, § 87. Operative date July 1, 1993.

**81-5,153. Training Division Cash Fund; created; use; investment.** The Training Division Cash Fund is created. Money collected pursuant to section 81-5,152 shall be remitted to the State Treasurer for credit to the fund. The fund shall be used for the purpose of administering the training program established pursuant to sections 81-5,151 to 81-5,157. The fund shall be administered by the State Fire Marshal. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Any money in the State Fire Marshal Cash Fund remitted for the purpose of administering the training program for fire department personnel and others involved in fire safety training for developing and maintaining fire department skills and safety operations shall be transferred to the Training Division Cash Fund as soon as possible after April 14, 2004.

**Source:** Laws 1980, LB 724, § 3; R.S.1943, (1987), § 79-1431; Laws 1993, LB 348, § 88; Laws 2004, LB 1091, § 17; Effective date April 14, 2004.

**Cross References:** Nebraska Capital Expansion Act, see section 72-1269. Nebraska State Funds Investment Act, see section 72-1260.

**81-5,154.** Repealed. Laws 2002, LB 93, s. 27.

**81-5,155.** Repealed. Laws 2002, LB 93, s. 27.

**81-5,156.** Repealed. Laws 2002, LB 93, s. 27.

**81-5,157. Fire Service and Safety Training Program; transfer to State Fire Marshal; personnel, records, and other property; transfer.** The Fire Service and Safety Training Program is hereby transferred to the State Fire Marshal. All personnel of the program in the State Department of Education who manage, teach, are office personnel, or are involved in the running of the program shall be transferred to the office of the State Fire Marshal on July 1, 1993.

All furniture, equipment, books, files, records, leases, and other property used by the Nebraska Fire Service shall be transferred and delivered to the State Fire Marshal on July 1, 1993.

**Source:** Laws 1993, LB 348, § 92. Operative date July 1, 1993.

## Fire Protection Systems

**81-5,158. Terms, defined.** For purposes of sections 81-5,158 to 81-5,164:

- (1) Responsible managing employee means an individual employed full time by the water-based fire protection system contractor who
  - (b) is currently certified by the National Institute for Certification in Engineering Technologies at level III or IV in fire protection engineering technology, automatic sprinkler system layout, or another nationally recognized certification in automatic sprinkler system layout recognized by the State Fire Marshal,
  - (c) has completed and passed an examination administered by the State Fire Marshal, and
  - (d) is an owner, partner, or officer or in a management position of a contractor;
- (2) Water-based fire protection system means a system of overhead piping:
  - (a) Designed in accordance with fire protection engineering standards, usually activated by heat from a fire and which, when activated, discharges water over a fire area;
  - (b) supplied from an acceptable water supply;
  - (c) which is specially sized or hydraulically designed and installed in a building, structure, or fire area to which fire sprinklers are connected; and
  - (d) which includes a controlling valve and usually a device for actuating an alarm when the system is in operation. Only the portion of the water-based fire protection system which is separate from the domestic water system is considered the water-based fire protection system. Water-based fire protection systems include wet-pipe systems, dry-pipe systems, foam-water systems, pre-action systems, deluge systems, combined dry-pipe and pre-action systems, standpipe systems, combined standpipe and sprinkler systems, water-spray fixed systems, fire pumps, fire protection water storage tanks, antifreeze systems, and circulating closed-loop systems; and
- (3) Water-based fire protection system contractor means a person engaged in the business of installation, repair, alteration, addition, maintenance, or inspection of water-based fire protection systems, but does not include
  - (a) individuals employed by and working under the direction of a contractor or
  - (b) local building officials, fire inspectors, or insurance inspectors when acting in their official capacity.

**Source:** Laws 1997, LB 636, § 1. Effective date September 13, 1997.

**81-5,159. Contractor certificate; required; application; fee; examination; renewal; responsible managing employee.**

- (1) Any water-based fire protection system contractor who installs, repairs, alters, adds to, maintains, or inspects water-based fire protection systems in this state shall first obtain a contractor certificate.
- (2) A water-based fire protection system contractor may apply to the State Fire Marshal for a contractor certificate. The application shall be made on a form prescribed by the State Fire Marshal and shall include a certificate fee of up to one hundred dollars. Each applicant must designate a responsible managing employee on the application, and this individual's name shall appear on the certificate with that of the water-based fire protection system contractor upon issuance. Proof of insurance required by section 81-5,160 shall also accompany the application.
- (3) Upon receipt of a complete application, proof of insurance, and certificate fee, the State Fire Marshal shall schedule a time for an examination of the responsible managing employee to demonstrate that he or she is familiar with the procedures and rules of the State Fire Marshal relating to water-based fire protection systems. If the responsible managing employee passes the examination, the State Fire Marshal shall issue the certificate to the water-based fire protection system contractor within thirty days.
- (4) A certificate shall expire on September 30 of the year following issuance. An application for renewal shall be filed at least thirty days prior to expiration and shall be accompanied by a renewal fee of up to one hundred dollars and a sworn affidavit that the responsible managing employee is currently employed by the water-based fire protection system contractor. A water-based fire protection system contractor who fails to apply for renewal within the time stated in this subsection must make a new application for a certificate.
- (5) A responsible managing employee may only act as such for one water-based fire protection system contractor at a time. When a responsible managing employee terminates his or her association with a water-based fire protection system contractor, the water-based fire protection system contractor shall notify the State Fire Marshal within thirty days after termination. The responsible managing employee shall not be designated as the responsible managing employee for more than two water-based fire protection system contractors in any twelve-month period. The State Fire Marshal shall revoke the certificate of a

water-based fire protection system contractor whose responsible managing employee has terminated his or her association with the water-based fire protection system contractor unless an application designating a new responsible managing employee is filed within six months after termination or prior to expiration of the current certificate, whichever is earlier.

**Source:** Laws 1997, LB 636, § 2. Effective date September 13, 1997.

**81-5,160. Contractor; insurance required.** A water-based fire protection system contractor shall maintain general and completed operations liability insurance for installation, inspection, and testing of water-based fire protection systems providing at least one million dollars of coverage.

**Source:** Laws 1997, LB 636, § 3. Effective date September 13, 1997.

**81-5,161. Sections; how construed.** Sections 81-5,158 to 81-5,164 shall not be construed to:

- (1) Relieve any person from payment of local license or permit fees;
- (2) Limit the power of the state or political subdivisions to regulate the quality and character of work performed by water-based fire protection system contractors through a system of permits, fees, and inspections which are designed to assure compliance with, and aid in the implementation of, state and local building laws or to enforce other local laws for the protection of the public health and safety; or
- (3) Limit the power of the state or political subdivisions to adopt any system of permits requiring submission to and approval by the state or political subdivision of plans and specifications for work to be performed by water-based fire protection system contractors before commencement of the work.

**Source:** Laws 1997, LB 636, § 4. Effective date September 13, 1997.

**81-5,162. Fees; penalties; distribution.** The money collected under sections 81-5,158 to 81-5,160 shall be remitted to the State Treasurer for credit to the State Fire Marshal Cash Fund. Any civil penalties collected under section 81-5,163 shall be remitted to the State Treasurer for credit to the permanent school fund.

**Source:** Laws 1997, LB 636, § 5. Effective date September 13, 1997.

**81-5,163. Violation; penalties.** Any violation of sections 81-5,158 to 81-5,162 is a Class V misdemeanor. In addition, the State Fire Marshal may impose a civil penalty of up to two hundred fifty dollars for each day a violation continues. Any violation shall also constitute grounds for revocation of a contractor certificate.

**Source:** Laws 1997, LB 636, § 6. Effective date September 13, 1997.

**81-5,164. Rules and regulations.** The State Fire Marshal shall adopt and promulgate rules and regulations to carry out sections 81-5,158 to 81-5,163.

**Source:** Laws 1997, LB 636, § 7. Effective date September 13, 1997.

## Emergency Management (Disasters)

### 81-829.43. Prevention measures; procedure.

- (1) In addition to prevention measures included in the state, city, village, county, and interjurisdictional emergency operations plans, the Governor shall consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters, emergencies, and civil defense emergencies. At his or her direction and pursuant to any other authority and competence they have, state agencies, including, but not limited to, those charged with responsibilities in connection with flood plain management, stream encroachment and flow regulation, fire prevention and control, air quality, public works, land use and land-use planning, and construction standards, shall make studies of prevention-related matters. The Governor, from time to time, shall make such recommendations to the Legislature, local governments, and other appropriate public and private entities as may facilitate measures for prevention or mitigation of the harmful consequences of disasters, emergencies, and civil defense emergencies.
- (2) The appropriate state agencies, in conjunction with the Nebraska Emergency Management Agency, shall keep land uses and construction of structures and other facilities under continuing study and identify areas which are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies under this subsection shall concentrate on means of mitigating or avoiding the dangers caused by any such occurrence or the consequences thereof.
- (3) If the agency believes on the basis of the studies or other competent evidence that an area is susceptible to a disaster, emergency, or civil defense emergency of catastrophic proportions without adequate warning, that existing building standards and land-use controls in that area are inadequate and could add substantially to the magnitude thereof, and that changes in zoning regulations, other land-use regulations, or building requirements are essential in order to further the purposes of this section, it shall specify the essential changes to the Governor. If the Governor upon review of the recommendation finds after public hearing that the changes are essential, he or she shall so recommend to the agencies or local governments with jurisdiction over the area and subject matter. If no action or insufficient action pursuant to his or her recommendations is taken within the time specified by the Governor, he or she shall so inform the Legislature and request appropriate legislative action to mitigate the impact of a disaster, emergency, or civil defense emergency.
- (4) The Governor, at the same time that he or she makes recommendations pursuant to subsection (3) of this section, may suspend the standard or control which he or she finds to be inadequate to protect the public safety and by regulation place a new standard or control in effect. The new standard or control shall remain in effect until rejected by resolution of the Legislature or amended by the Governor. During the time it is in effect, the standard or control contained in the Governor's regulation shall be administered and given full effect by all relevant regulatory agencies of the state and local governments to which it applies. The Governor's action shall be subject to judicial review but shall not be subject to temporary stay pending litigation.

**Source:** Laws 1973, LB 494, § 8; Laws 1988, LB 352, § 168; Laws 1996, LB 43, § 24; Laws 1996, LB 966, § 1.

### 81-829.57. Persons within the state; conduct; personal services; compensation for property; claim; file.

- (1) Each person within this state shall conduct himself or herself and keep and manage his or her affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public successfully to meet disasters, emergencies, or civil defense emergencies. This obligation shall include appropriate personal service and use or restriction on the use of property in time of disaster, emergency, or civil defense emergency. The Emergency Management Act shall not be construed to increase or decrease these obligations, but the act recognizes their existence under the Constitution of Nebraska and statutes of this state and the common law. Compensation for services or for the taking or use of property shall be only to the extent that obligations recognized in this subsection are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered his or her services or property without compensation.
- (2) No personal services may be compensated by the state or any subdivision or agency thereof, except pursuant to statute or local law, resolution, or ordinance.
- (3) Compensation for property shall be made only if the property was commandeered or otherwise used in coping with a disaster, emergency, or civil defense emergency and its use or destruction was ordered by the Governor or a member of the emergency management forces of this state to whom the Governor has duly delegated such authority.

- (4) Any person claiming compensation for the use, damage, loss, or destruction of property under the act shall file a claim therefor with the Nebraska Emergency Management Agency in the form and manner the agency provides.
  - (5) Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed upon between the claimant and the agency, the amount of compensation shall be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state.
  - (6) Nothing in this section shall apply to or authorize compensation for the destruction or damaging of standing timber or other property in order to provide a fire break or to the release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood.
- Source:** Laws 1973, LB 494, § 22; Laws 1996, LB 43, § 37. Effective date July 19, 1996.

**81-829.65. Emergency operations; moving of equipment outside limits of local government; law enforcement personnel; powers; insurance.** The governing body of each local government of this state shall take the necessary action to permit the movement of its emergency equipment and personnel, utility equipment and personnel, or such equipment and personnel as defined in the state, city, village, county, or interjurisdictional emergency operations plans outside the limits of such local government in order to render aid in the event of disaster, emergency, or civil defense emergency or in connection with any program of practice or training for such disaster, emergency, or civil defense emergency when such program is conducted or participated in by the Nebraska Emergency Management Agency or with any other related training program. If such personnel includes law enforcement personnel rendering aid in their law enforcement capacity, the law enforcement personnel shall have the power and authority to enforce the laws of this state or any legal ordinances or resolutions of the local government where they are rendering aid or otherwise perform the functions of their office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within the territorial limits of their primary jurisdiction. Such movement may be to any point in this state or may be into any adjoining state when mutual aid arrangements have been entered into on behalf of this state with such other state as authorized by section 81-829.56. Each local government shall self-insure or contract for insurance against any liability for personal injuries or property damage that may be incurred by it or by its personnel as the result of any movement made pursuant to this section.

**Source:** Laws 1957, c. 380, § 1, p. 1323; R.R.S.1943, § 81-829.32; Laws 1973, LB 494, § 30; Laws 1988, LB 961, § 1; Laws 1996, LB 43, § 44; Laws 1997, LB 546, § 1.

## Aboveground Storage Tanks

### **81-1575. Registration of storage tanks; registration form; fee; State Fire Marshal; rules and regulations.**

Commencing on January 1, 1986, the State Fire Marshal shall require the registration of all permanently located aboveground storage tanks used for the storage or dispensing of hazardous substances. A registration form shall be provided by and filed with the State Fire Marshal. The registration form shall be updated to detail any change in the usage or operation of the tank as such changes occur. A copy of each registration form shall be forwarded by the State Fire Marshal to the fire department located nearest to the particular storage tank. A registration fee shall be assessed by the State Fire Marshal. The registration fee shall be in an amount which is deemed necessary by the State Fire Marshal to compensate for the costs of administering sections 81-1575 to 81-1577, except that such fee shall not exceed ten dollars. All registration fees collected pursuant to this section shall be paid into the State Fire Marshal Cash Fund for the purpose of administering sections 81-1575 to 81-1577. The State Fire Marshal shall adopt and promulgate the rules and regulations he or she deems necessary to give notification to those individuals that need to register storage tanks under sections 81-1575 to 81-1577.

**Source:** Laws 1985, LB 383, § 1. Effective date September 6, 1985.

### **81-1576. Terms, defined.** As used in sections 81-1575 to 81-1577, unless the context otherwise requires:

- (1) Hazardous substance shall mean any substance defined in subsection (14) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as it existed on January 1, 1985, but not including any substance regulated as a hazardous waste under subtitle C of such act;
- (2) Registration shall mean the submission of information on a form which includes, but is not limited to:
  - (a) A description of the type and size of the storage tank;
  - (b) The number of barrels or other measurement used to determine the storage capacity of the tank;
  - (c) A list of all hazardous substances which are or will be stored in the tank;
  - (d) The name and address of the facility at which the tank is located;
  - (e) The name and address of the person, firm, or corporation owning the storage tank and, if different, the name and address of the person who operates the storage tank;
  - (f) The name of the contact person and a telephone number where the contact person can be reached at any time in the event of an emergency involving the tank or facility at which the tank is located; and
  - (g) If the owner or operator of the storage tank is a public agency, the registration shall include the name of the supervisor of the division, section, or office which operates the tank; and
- (3) Storage tank shall mean any tank having a storage capacity in excess of one thousand gallons used for the containment of hazardous substances for any period of time, except those tanks which are regulated under rules and regulations adopted pursuant to section 81-502 in accordance with standard K 61.1(1972) of the American National Standards Institute.

**Source:** Laws 1985, LB 383, § 2; Laws 2002, LB 1105, § 509.

### **81-1577. Registration; violation; penalty.** Any person who is required to register pursuant to section 81-1575 or the rules and regulations thereunder and who fails to do so shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1985, LB 383, § 3. Effective date September 6, 1985.

### **81-1577.01. Motor vehicle fuel storage tanks; aboveground tanks authorized.**

- (1) The State Fire Marshal shall allow a tank used for the storage of motor vehicle fuel to remain aboveground if the tank was in existence on May 29, 1959, and is in compliance with the rules and regulations established pursuant to section 81-502.
- (2) The State Fire Marshal shall permit by rule and regulation, in cities with a population of less than two thousand inhabitants, in villages, and in unincorporated areas, the installation of aboveground tanks to replace underground tanks used for the storage of motor vehicle fuel by dealers who sell motor vehicle fuel at retail. The capacity of the aboveground replacement tanks shall not exceed the total capacity of the underground tanks being replaced or eighteen thousand gallons per retail facility, whichever is less.
- (3) For purposes of this section, dealers and motor vehicle fuel shall have the meanings provided in section 66-482 for importers and motor vehicle fuel.

**Source:** Laws 1990, LB 1118, § 1; Laws 1991, LB 627, § 143. Operative date January 1, 1992.



## Underground Storage Tanks

**81-15,117. Act, how cited.** Sections 81-15,117 to 81-15,127 shall be known and may be cited as the Petroleum Products and Hazardous Substances Storage and Handling Act.

**Source:** Laws 1986, LB 217, § 1; Laws 1989, LB 289, § 31; Laws 1991, LB 409, § 20; Laws 1996, LB 1226, § 14; Laws 1998, LB 1161, § 39; Laws 2001, LB 461, § 10.

**81-15,118. Legislative findings.** The Legislature finds that the number of leaking underground storage tanks throughout the state is increasing and that there exists a serious threat to the health and safety of citizens because substances contained in leaking storage tanks are often potential ground water contaminants and major fire and explosive hazards.

For the reasons stated in this section, the Legislature deems it necessary to provide a program of storage tank registration and inspection as a preventative measure and a comprehensive leak cleanup program as a responsive measure. Primary responsibility for the Petroleum Products and Hazardous Substances Storage and Handling Act shall be with the Department of Environmental Quality. However, preventative measures described in such act shall also be carried out by the State Fire Marshal. The State Fire Marshal's actions shall be pursuant to an interagency agreement with the department.

**Source:** Laws 1986, LB 217, § 2; Laws 1993, LB 3, § 57. Effective date September 9, 1993.

**81-15,119. Terms, defined.** For purposes of the Petroleum Products and Hazardous Substances Storage and Handling Act, unless the context otherwise requires:

- (1) Operator shall mean any person in control of, or having responsibility for, the daily operation of a tank but shall not include a person described in subdivision (2)(b) of this section;
- (2) (a) Owner shall mean:
  - (i) In the case of a tank in use on July 17, 1986, or brought into use after such date, any person who owns a tank used for the storage or dispensing of regulated substances; and
  - (ii) In the case of any tank in use before July 17, 1986, but no longer in use on such date, any person who owned such tank immediately before the discontinuation of its use.
- (b) Owner shall not include a person who, without participating in the management of a tank and otherwise not engaged in petroleum production, refining, and marketing:
  - (i) Holds indicia of ownership primarily to protect his or her security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or
  - (ii) Acquires ownership of a tank or the property on or within which a tank is or was located:
    - (A) Pursuant to a foreclosure of a security interest in the tank or of a lienhold interest in the property; or
    - (B) If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.
- (c) Ownership of a tank or the property on or within which a tank is or was located shall not be acquired by a fraudulent transfer, as provided in the Uniform Fraudulent Transfer Act;
- (3) Permanent abandonment shall mean that a tank has been taken permanently out of service as a storage vessel for any reason or has not been used for active storage for more than one year;
- (4) Person shall mean any individual, firm, joint venture, partnership, limited liability company, corporation, association, political subdivision, cooperative association, or joint-stock association and includes any trustee, receiver, assignee, or personal representative thereof owning or operating a tank;
- (5) Petroleum product shall mean any petroleum product, including, but not limited to, petroleum-based motor or vehicle fuels, gasoline, kerosene, and other products used for the purposes of generating power, lubrication, illumination, heating, or cleaning, but shall not include propane or liquefied natural gas;
- (6) Regulated substance shall mean any petroleum product and any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as such act existed on May 31, 2001, but not including any substance regulated as a hazardous waste under subtitle C of such act;
- (7) Release shall mean any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a tank or any overfilling of a tank into ground water, surface water, or subsurface soils;
- (8) Remedial action shall mean any immediate or long-term response to a release or suspected release in

- accordance with rules and regulations adopted and promulgated by the department or the State Fire Marshal, including tank testing only in conjunction with a release or suspected release, site investigation, site assessment, cleanup, restoration, mitigation, and any other action which is reasonable and necessary;
- (9) Risk-based corrective action shall mean an approach to petroleum release corrective actions in which exposure and risk assessment practices, including appropriate consideration of natural attenuation, are integrated with traditional corrective actions to ensure that appropriate and cost-effective remedies are selected that are protective of human health and the environment;
- (10) Tank shall mean any tank or combination of tanks, including underground pipes connected to such tank or tanks, which is used to contain an accumulation of regulated substances and the volume of which is ten percent or more beneath the surface of the ground. Tank shall not include any:
- (a) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for consumptive use on the premises where stored, subject to a one-time fee;
  - (b) Tank with a storage capacity of one thousand one hundred gallons or less used for storing heating oil for consumptive use on the premises where stored, subject to a one-time fee;
  - (c) Septic tank;
  - (d) Tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the tank is situated on or above the surface of the floor;
  - (e) Pipeline facility, including gathering lines:
    - (i) Defined under 49 U.S.C. 60101, as such section existed on May 31, 2001; or
    - (ii) Which is an intrastate pipeline regulated under state law comparable to the law prescribed in subdivision (e)(i) of this subdivision;
  - (f) Surface impoundment, pit, pond, or lagoon;
  - (g) Flow-through process tank;
  - (h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
  - (i) Storm water or wastewater collection system; and
- (11) Temporary abandonment shall mean that a tank will be or has been out of service for at least one hundred eighty days but not more than one year.

**Source:** Laws 1986, LB 217, § 3; Laws 1987, LB 365, § 1; Laws 1989, LB 289, § 32; Laws 1991, LB 409, § 22; Laws 1993, LB 121, § 542; Laws 1996, LB 1226, § 15; Laws 1998, LB 1161, § 40; Laws 2001, LB 461, § 11.

**81-15,120. Farm or residential tank; heating oil storage tank; registration; when required; fee; Petroleum Products and Hazardous Substances Storage and Handling Fund; created; use; investment.** Any farm or residential tank or tank used for storing heating oil as defined in subdivisions (10)(a) and (b) of section 81-15,119 shall be registered with the State Fire Marshal. The registration shall be accompanied by a one-time fee of five dollars and shall be valid until the State Fire Marshal is notified that a tank so registered has been permanently closed. Such registration shall specify the ownership of, location of, and substance stored in the tank to be registered. The State Fire Marshal shall remit the fee to the State Treasurer for credit to the Petroleum Products and Hazardous Substances Storage and Handling Fund which is hereby created as a cash fund. The fund shall also consist of any money appropriated to the fund by the state. The fund shall be administered by the Department of Environmental Quality to carry out the purposes of the Petroleum Products and Hazardous Substances Storage and Handling Act, including the provision of matching funds required by Public Law 99-499 for actions otherwise authorized by the act. Any money in such fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1986, LB 217, § 4; Laws 1989, LB 816, § 1; Laws 1993, LB 3, § 58; Laws 1994, LB 1066, § 119; Laws 1996, LB 1226, § 16; Laws 1998, LB 1161, § 41; Laws 2001, LB 461, § 12.

**81-15,121. Tanks; permit; when required; fees; application; Underground Storage Tank Fund; created; investment.**

- (1) A person shall not
  - (a) maintain or use any tank for the storage of regulated substances,
  - (b) install any new tank, or
  - (c) permanently close a tank without first securing a permit from the State Fire Marshal.
- (2) A fee shall not be charged for a permit under subdivision (1)(a) or (c) of this section. The fee for a permit for installation shall be fifty dollars. The State Fire Marshal shall remit the fee to the State Treasurer for credit to the Underground Storage Tank Fund.

- (3) All owners of operating tanks, except those provided for in subsection (4) of this section, shall annually register each tank. All registration permits shall expire on December 31 of the year for which the permit was issued. The registration fee shall be thirty dollars per tank. The State Fire Marshal shall remit the fee to the State Treasurer for credit to the Underground Storage Tank Fund. Such permits shall contain the information specified in subsection (5) of this section.
- (4) In the case of tanks permanently abandoned on or after January 1, 1974, an annual permit shall not be required and an initial registration permit shall be sufficient.
- (5) The application for a registration permit shall be provided by and filed with the State Fire Marshal's office and shall require, but not be limited to, the following information:
  - (a) The date the tank was placed in or taken out of operation;
  - (b) The age of the tank;
  - (c) The size, type, and location of the tank; and
  - (d) The type of substances stored in the tank and the quantity of such substances remaining in the tank if the tank has been permanently closed.
- (6) The registration permit fee collected pursuant to this section shall be deposited in the Underground Storage Tank Fund which is hereby created as a cash fund. The fund shall also consist of any money appropriated to the fund by the state. The fund shall be administered by the State Fire Marshal to carry out the purposes of the Petroleum Products and Hazardous Substances Storage and Handling Act. Any money in such fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1986, LB 217, § 5; Laws 1987, LB 365, § 2; Laws 1989, LB 816, § 2; Laws 1994, LB 1066, § 120; Laws 1998, LB 1161, § 42.

**81-15,122. Denial of permit; procedures; appeal.** Before the State Fire Marshal denies an application for a permit, the affected person shall be given notice and opportunity for a hearing under procedures established by the State Fire Marshal. Upon receipt of the notification, any person aggrieved by the denial or revocation of a permit may request a hearing within ten days or the decision of the State Fire Marshal shall become final. When the State Fire Marshal has reason to believe that a permit holder's activities create an immediate threat to public safety, a permit may be suspended until the hearing process is complete. Any person aggrieved by a final decision of the State Fire Marshal may appeal such action, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1986, LB 217, § 6; Laws 1988, LB 352, § 178. Operative date July 1, 1989.

**81-15,123. State Fire Marshal; rules and regulations; considerations; requirements.** The State Fire Marshal shall adopt and promulgate rules and regulations governing release, detection, prevention, and correction procedures applicable to all owners and operators as shall be necessary to protect human health, public safety, and the environment. Such rules and regulations may distinguish between types, classes, and ages of tanks. In making such distinctions, the State Fire Marshal shall consider, but not be limited to, location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry-recommended practices, national consensus codes, hydrogeology, depth to the ground water, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tanks, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated. Before adoption, such rules and regulations shall be reviewed and approved by the Director of Environmental Quality who shall determine whether the proposed rules and regulations are adequate to protect the environment. Rules and regulations adopted and promulgated pursuant to this section shall include, but not be limited to:

- (1) Proper procedures and specifications for the construction, design, installation, replacement, or repair of tanks;
- (2) A permit and registration system for all tanks;
- (3) A program to establish an inspection system for all tanks. Such program shall provide for periodic safety inspections and spot checks of monitoring systems by the State Fire Marshal. A fee schedule may also be developed for the inspection of new tank and piping installations and tank closures in the manner prescribed in section 81-505.01. Such inspection fees shall be remitted by the State Fire Marshal to the State Treasurer for credit to the Underground Storage Tank Fund. No fee shall be charged for the periodic safety inspections and spot checks of monitoring systems by the State Fire Marshal;
- (4) A monitoring system for all tanks which includes, but is not limited to, the following:
  - (a) An inventory-control procedure for any tank used to hold petroleum products or hazardous substances for resale;

- (b) An inventory-control procedure for any tank used solely for consumptive onsite purposes and not for resale. Such control procedure shall determine the method of inventory measurement giving consideration to the economic burden created by the procedure. The frequency of inventory measurement for such category of tank shall include at least one measurement every thirty days;
  - (c) Provisions for the prompt reporting of any release of a regulated substance; and
  - (d) A procedure for the proper method of monitoring tanks;
  - (5) A procedure for notifying the State Fire Marshal of temporarily or permanently abandoned tanks;
  - (6) A procedure for removing or making safe any abandoned tanks, except that the State Fire Marshal may dispense with such procedure in special circumstances;
  - (7) Financial responsibility requirements, taking into account the financial responsibility requirements established pursuant to 42 U.S.C. 6991b(d);
  - (8) Requirements for maintaining a leak-detection system, an inventory-control system, and a tank-testing or comparable system or method designed to identify releases in a manner consistent with the protection of human health, public safety, and the environment;
  - (9) Requirements for maintaining records of any monitoring or leak-detection system, inventory-control system, or tank-testing or comparable system; and
  - (10) Provisions to establish a system for licensing tank installation and removal contractors.
- Nothing in this section shall be construed to require a subcontractor working under the direction of a licensed installation or removal contractor to be licensed.

**Source:** Laws 1986, LB 217, § 7; Laws 1989, LB 816, § 3; Laws 1991, LB 409, § 23; Laws 1993, LB 3, § 59; Laws 1993, LB 720, § 1. Effective date September 9, 1993.

**81-15,124. Release of regulated substance; Department of Environmental Quality; State Fire Marshal; powers and duties; remedial action plan.** Any reported or suspected release of a regulated substance from any tank shall be investigated consistent with principles of risk-based corrective action by the State Fire Marshal and the Department of Environmental Quality. In the event that the State Fire Marshal or the department finds an adverse effect caused by a release of a regulated substance from a tank:

- (1) The State Fire Marshal shall
  - (a) determine the immediate danger presented by the release,
  - (b) take all steps necessary to assure immediate public safety, and
  - (c) assist the department in determining the source of the release and taking all steps necessary to ensure that the release is halted;
- (2) By order of the department, the owner or operator of the tank causing the release shall, after securing the source of the release, develop a plan for remedial action to be approved by the department. The department shall inform the owner or operator of its approval or disapproval of a plan for remedial action within one hundred twenty days after receipt of a remedial action plan which contains all required information. If after one hundred twenty days the department fails to either deny, approve, or amend the remedial action plan submitted, the proposed plan shall be deemed approved; and
- (3) The approved remedial action plan shall then be carried out by the owner or operator of the tank causing the release. All expenses incurred during the remedial action shall be paid by the owner or operator subject to reimbursement pursuant to the Petroleum Release Remedial Action Act.

If it is determined that the source of the release is unknown or that the owner or operator of the facility causing the release is unknown or unavailable, a remedial action plan shall be developed by or under the direction of the department. Such remedial action plan shall be developed and carried out by the department with money from the Petroleum Products and Hazardous Substances Storage and Handling Fund if funds are available. If at a later date the owner or operator of the facility which caused the release is determined, he or she shall be responsible for remedial action costs incurred on his or her behalf subject to reimbursement pursuant to the Petroleum Release Remedial Action Act. Any money received from such person shall be deposited in the Petroleum Products and Hazardous Substances Storage and Handling Fund.

**Source:** Laws 1986, LB 217, § 8; Laws 1989, LB 289, § 33; Laws 1993, LB 3, § 60; Laws 1993, LB 237, § 5; Laws 1998, LB 1161, § 43.

**Note:** The Revisor of Statutes has pursuant to section 49-769 correlated LB 3, section 60, with LB 237, section 5, to reflect all amendments. The changes made by LB 3, section 60, became effective September 9, 1993. The changes made by LB 237, section 5, became effective June 5, 1993.

**Cross Reference:** Petroleum Release Remedial Action Act, see section 66-1501.

**81-15,124.01. Environmental Quality Council; rules and regulations.**

- (1) The Environmental Quality Council shall adopt and promulgate rules and regulations consistent with principles of risk-based corrective action governing all phases of remedial action to be taken by owners, operators, and other persons in response to a release or suspected release of a regulated substance from a tank. Such rules and regulations shall include:
  - (a) Provisions governing remedial action to be taken by owners and operators pursuant to section 81-15,124;
  - (b) Provisions by which the Department of Environmental Quality may determine the cleanup levels to be achieved through soil or water remediation and the applicable limitations for air emissions at the petroleum release site or occurring by reason of such remediation; and
  - (c) Such other provisions necessary to carry out the Petroleum Products and Hazardous Substances Storage and Handling Act.
- (2) In developing rules and regulations, the Environmental Quality Council shall take into account
  - (a) risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety and the environment using, to the extent appropriate, a tiered approach consistent with the American Society for Testing of Materials guidance for risk-based corrective action applicable to petroleum release sites and
  - (b) rules and regulations proposed by the technical advisory committee established in section 81-15,189.

**Source:** Laws 1989, LB 289, § 34; Laws 1993, LB 3, § 61; Laws 1996, LB 1226, § 18; Laws 1998, LB 1161, § 44. Operative date April 15, 1998.

**81-15,124.02. Access to property.** If necessary in the course of an investigation or inspection or during the remedial action and if the owner of property or the owner's agent has specifically denied the Department of Environmental Quality access to the property for such purposes, the department may order the owner or owner's agent to grant access to property for the performance of reasonable steps, including drilling, to determine the source and extent of contamination or for remediation. Access shall be by the department or by a person conducting an investigation, inspection, or remedial action at the direction of the department. All actions taken on the property shall be performed in the least obtrusive manner possible to allow the investigation, inspection, or remedial action to proceed. Upon completion of any such actions, the property shall be restored as nearly as possible to its original condition.

**Source:** Laws 1991, LB 409, § 21; Laws 1993, LB 3, § 62. Effective date September 9, 1993.

**81-15,124.03. Remedial action plan; considerations.** The plan for remedial action shall take into account risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety and the environment using, to the extent appropriate, a tiered approach consistent with the American Society for Testing of Materials standards.

**Source:** Laws 1996, LB 1226, § 17. Effective date April 16, 1996.

**81-15,125. Violation; penalty.** Any person violating the Petroleum Products and Hazardous Substances Storage and Handling Act or the rules, regulations, or orders of the State Fire Marshal or the Department of Environmental Quality adopted or issued pursuant to such act shall be subject to a civil fine of not more than five thousand dollars for each offense and, in the case of a continuing violation, each day of violation shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the size of the operation and the degree and extent of the pollution.

**Source:** Laws 1986, LB 217, § 9; Laws 1993, LB 3, § 63. Effective date September 9, 1993.

**81-15,126. Violation; action to enjoin.** The Department of Environmental Quality or the State Fire Marshal may apply to the district court of the county where the violation is occurring or about to occur for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the Petroleum Products and Hazardous Substances Storage and Handling Act or the rules, regulations, or orders adopted and promulgated under the act. The court shall have jurisdiction to grant relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without

bond.

**Source:** Laws 1986, LB 217, § 10; Laws 1993, LB 3, § 64. Effective date September 9, 1993.

**81-15,127. Notice of registration requirements; duty to provide.**

- (1) Any person who deposits regulated substances in a tank shall reasonably notify the owner or operator of such tank of the owner's or operator's registration requirements pursuant to the Petroleum Products and Hazardous Substances Storage and Handling Act.
- (2) The Department of Environmental Quality shall design and make available a printed notice of registration for owners of tanks to any person who deposits regulated substances in a tank.

**Source:** Laws 1986, LB 217, § 11; Laws 1993, LB 3, § 65. Effective date September 9, 1993.

## Public Safety Wireless Communication System Act

**86-401. Act, how cited.** Sections 86-401 to 86-418.01 shall be known and may be cited as the Nebraska Public Safety Communication System Act.

**Source:** Laws 1999, LB 446, § 1; R.S.1943, (1999), § 86-1803; Laws 2002, LB 1105, § 208; Laws 2002, LB 1211, § 14; Laws 2005, LB 343, § 2; Effective date June 3, 2005.

**86-402. Legislative findings.** The Legislature finds that:

- (1) During emergencies the resources of the state and its political subdivisions must be effectively directed to save lives, to protect property, and to meet the needs of its citizens;
- (2) Public safety agencies fulfill this unique and essential role;
- (3) Public safety agencies are only as effective as their ability to communicate. To adequately ensure public safety, such agencies require efficient, reliable communication systems which account for their unique role and the specialized needs that accompany such role;
- (4) There are presently radio communication systems used by public safety agencies during daily operations and emergencies that are deficient. Many of Nebraska's systems rely on inadequate equipment, are susceptible to communication interference, have limited coverage areas, operate under the constraints of a limited number of radio frequency channels, and lack coordination and the ability to interoperate among city, county, and other local users, state users, and federal users. Additionally, such systems presently do not allow for secure transmissions which are necessary for the protection and integrity of public safety communications;
- (5) Recent changes and advances in communication technology would increase the capability of public safety agencies to provide efficient and effective public safety services;
- (6) Investment in the public safety communication infrastructure is required to ensure the effectiveness of Nebraska's public safety agencies;
- (7) Regional approaches to communications planning and preparedness and the adoption of regional response structures should be used to develop and sustain interoperable communications. Local and state public safety agencies shall develop a comprehensive interoperable communications plan before receiving any state or federal funding to build, upgrade, enhance, or replace communication systems; and
- (8) A network of regional communication systems should balance the need for multiple simultaneous users while maintaining autonomy for the internal use of individual agencies. The objectives of such a network should include maximizing resources and reducing duplication among public safety agencies as well as encouraging cooperation, coordination, consolidation, sharing, and partnerships between public agencies and private entities.

**Source:** Laws 1999, LB 446, § 2; R.S.1943, (1999), § 86-1804; Laws 2002, LB 1105, § 209; Laws 2002, LB 1211, § 15; Laws 2005, LB 343, § 3. Effective date June 3, 2005.

**86-403. Definitions, where found.** For purposes of the Nebraska Public Safety Communication System Act, the definitions found in sections 86-407 and 86-408 apply.

**Source:** Laws 1999, LB 446, § 3; R.S.1943, (1999), § 86-1805; Laws 2002, LB 1105, § 210; Laws 2002, LB 1211, § 16; Laws 2005, LB 343, § 4. Effective date June 3, 2005.

**86-404.** Repealed. Laws 2005, LB 343, s. 13.

**86-405.** Repealed. Laws 2005, LB 343, s. 13.

**86-406.** Repealed. Laws 2005, LB 343, s. 13.

**86-407. Division, defined.** Division means the division of communications of the Department of Administrative Services.

**Source:** Laws 2002, LB 1105, § 212.

**86-408. Public safety agency, defined.** Public safety agency means any federal, state, or political subdivision entity which provides emergency and public safety services, including medical services, law enforcement services, fire management services, correctional services, and emergency and disaster relief services.

**Source:** Laws 2002, LB 1105, § 213.

**86-409.** Repealed. Laws 2005, LB 343, s. 13.

**86-410.** Repealed. Laws 2005, LB 343, s. 13.

**86-411.** Repealed. Laws 2005, LB 343, s. 13.

**86-412.** Repealed. Laws 2005, LB 343, s. 13.

**86-413.** Repealed. Laws 2005, LB 343, s. 13.

**86-414.** Repealed. Laws 2005, LB 343, s. 13.

**86-415.** Repealed. Laws 2005, LB 343, s. 13.

**86-416. Service agreement provisions; special tax; procedure.**

- (1) Notwithstanding any other provision of Nebraska law, any city, county, village, public power district, or fire protection district may enter into a service agreement with any joint entity created pursuant to the Interlocal Cooperation Act or any joint public agency created pursuant to the Joint Public Agency Act which owns or operates or proposes to own or operate any public safety communication project for obtaining communication services, including the use or right to use real or personal property included in any such project. This subsection shall not be construed to authorize any service agreements that conflict with the provisions for the sale or lease of dark fiber pursuant to sections 86-574 to 86-578.
- (2) Any such service agreement may provide for the following:
  - (a) The payment of fixed or variable periodic amounts for service or the right to obtain service, including the use or right to use real or personal property;
  - (b) That such service agreement may extend for a term of years as determined by the governing body of the city, county, village, public power district, or fire protection district and be binding upon such city, county, village, public power district, or fire protection district over such term of years;
  - (c) That fixed or variable periodic amounts payable may be determined based upon any of the following factors:
    - (i) Operating, maintenance, and management expenses, including renewals and replacements for facilities and equipment;
    - (ii) Amounts payable with respect to debt service on bonds or other obligations, including margins of coverage if deemed appropriate; and
    - (iii) Amounts necessary to build or maintain operating reserves, capital reserves, and debt service reserves;
  - (d) That any such service agreement may require payment to be made in the agreed fixed or variable periodic amounts irrespective of whether such public safety communication project or regional communication system is completed or operational and notwithstanding any suspension, interruption, interference, reduction, or curtailment of the services of such project or system; and
  - (e) Such other provisions as the parties to the service agreement deem appropriate in connection with providing and obtaining public safety communication service, including the acquisition of real and personal property, the construction of facilities, and the operation, maintenance, and management of services, property, and facilities.
- (3) In order to provide for the payments due under such service agreement:
  - (a) Any city, county, village, or fire protection district may provide that payments may be made from a special tax levied for such purpose upon all taxable property within such city, county, village, or fire protection district, if determined appropriate by the governing body by a vote of three-fourths of the members of the governing body, if there are four or more members of such body, or by a vote of two-thirds of the members of the governing body, if there are less than four members of such body. The special tax shall for all purposes of Nebraska law, including limitations upon tax levies, budgets, revenue, and expenditures of public funds, have the same status as a tax levied for the purpose of paying the bonded indebtedness of such city, county, village, or fire protection district; and
  - (b) Any public power district may pledge the revenue of the district, subject to any existing pledges made for bonded indebtedness or borrowings from the United States or any other party and existing conditions relating to issuance of additional bonds or other indebtedness, and, if deemed



appropriate by the governing body, the service agreement may have the status of revenue bond indebtedness issued pursuant to sections 70-631 to 70-635.

**Source:** Laws 2002, LB 1211, § 23; Laws 2005, LB 343, § 5. Effective date June 3, 2005.

**Cross References:** Interlocal Cooperation Act, see section 13-801. Joint Public Agency Act, see section 13-2501.

**86-417. Public Safety Communications Fund; created; use; investment.** The Public Safety Communications Fund is created. The fund shall be administered by the division and shall consist of such money as appropriated by the Legislature. No General Funds shall be appropriated to the Public Safety Communications Fund until legislation has been passed identifying the share of the costs to be paid by the State of Nebraska and specifically authorizing the transfer of funds. The Public Safety Communications Fund shall be used for any costs and payments to be made by the State of Nebraska pursuant to the Nebraska Public Safety Communication System Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1999, LB 446, § 6; R.S.1943, (1999), § 86-1808; Laws 2002, LB 1105, § 217; Laws 2002, LB 1211, § 24; Laws 2005, LB 343, § 6. Effective date June 3, 2005.

**Cross References:** Nebraska Capital Expansion Act, see section 72-1269. Nebraska State Funds Investment Act, see section 72-1260.

**86-418. Standards; incentives.** The division shall develop and adopt technical and operational standards for any communication system acquired, developed, constructed, or replaced by any state agency or any city, county, village, public power district, fire protection district, or other political subdivision, including joint entities and joint public agencies created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act. The division shall develop incentives to encourage regional cooperation in public safety communication throughout the state. The division shall assist local communities and public safety agencies which desire to connect with a network of regional communication systems. Incentive alternatives may include financial incentives to encourage migration by communities to the network and to reward communities which coordinate efforts to form public safety communication centers. Such incentives shall not mandate migration by public safety agencies to the network.

**Source:** Laws 1999, LB 446, § 7; R.S.1943, (1999), § 86-1809; Laws 2002, LB 1105, § 218; Laws 2005, LB 343, § 7. Effective date June 3, 2005.

**Cross References:** Interlocal Cooperation Act, see section 13-801. Joint Public Agency Act, see section 13-2501.

**86-418.01 Regional Interoperability Advisory Board; created; duty; members; expenses.**

- (1) The Regional Interoperability Advisory Board is created. The board shall provide advice to the division regarding the formation, expansion, and enhancement of regional communication systems to achieve interoperability. For administrative and budgetary purposes, the board shall be within the division. The division shall provide office space, equipment, technical assistance, and staff support for the board.
- (2) The advisory board shall consist of the following members, all of whom shall be individuals with knowledge of the communications needs of their represented constituency:
  - (a) A representative of the division;
  - (b) A representative of the Nebraska Emergency Management Agency; and
  - (c) Four representatives of regional communication systems.
- (3) The members of the advisory board shall be appointed by the Governor. Each member's term shall be for two years from the date of appointment. Members shall be reimbursed from the Public Safety Communications Fund for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.
- (4) The advisory board shall terminate on January 1, 2009.

**Source:** Laws 2005, LB 343, § 8. Effective date June 3, 2005.

**86-419.** Repealed. Laws 2005, LB 343, s. 13.

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